

COUNCIL MEETING

SEPTEMBER 10, 2014

The Council Meeting of the Council of the County of Kaua'i was called to order by Council Chair Jay Furfaro at the Council Chambers, 4396 Rice Street, Suite 201, Lihu'e, Kaua'i, on Wednesday, September 10, 2014 at 8:39 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum
Honorable Mason K. Chock, Sr. (*excused at 4:12 p.m.*)
Honorable Gary L. Hooser
Honorable Ross Kagawa
Honorable Mel Rapozo (*present at 8:59 a.m.*)
Honorable JoAnn A. Yukimura
Honorable Jay Furfaro

Chair Furfaro: Please note that I did receive a call from Councilmember Rapozo. He is running about fifteen (15) minutes late this morning. I would like to get an approval of the agenda, but after we go through the public comment portion and the various communications, I do want the audience to know that we will be going into Executive Session for ES-755, which is appropriately posted for today.

APPROVAL OF AGENDA.

Mr. Kagawa moved for approval of the agenda as circulated, seconded by Ms. Yukimura, and carried by a vote of 6:0:1 (*Mr. Rapozo is excused*).

Chair Furfaro: Next, may I have the public comment portion read, please?

PUBLIC COMMENT.

Pursuant to Council Rule 13(e), members of the public shall be allowed a total of eighteen (18) minutes on a first come, first served basis to speak on any agenda item. Each speaker shall be limited to three (3) minutes at the discretion of the Chair to discuss the agenda item and shall not be allowed additional time to speak during the meeting. This rule is designed to accommodate those who cannot be present throughout the meeting to speak when the agenda items are heard. After the conclusion of the eighteen (18) minutes, other members of the public shall be allowed to speak pursuant to Council Rule 12(e).

Chair Furfaro: Thank you. Is there anyone in the audience who wishes to speak on any item without any question and answer from the Council, which is on today's agenda? I will recognize you all in a moment. I also want to make sure that you all know that the tax postings today are, in fact, for first reading. First reading will be action taken by the Council to refer them to a public comment period yet to be dated. Did anybody else sign up, other than the hands that I saw? Let us go through those who have signed up first.

JADE K. FOUNTAIN-TANIGAWA, Deputy County Clerk: Chair, we have three (3) registered speakers. The first speaker is Gary Pierce, followed by Carl Imparato, and then Glenn Mickens.

Chair Furfaro: Okay. Come right up. You should see a blue light when you press the button. Go ahead and introduce yourself.

There being no objections, the rules were suspended.

GARY PIERCE: Good morning, Council. My name is Gary Pierce for the record. The County of Kaua'i has no reserve. It is a line of credit for one hundred eighty-eight million dollars (\$188,000,000) that the County paid ten million dollars (\$10,000,000) to twelve million dollars (\$12,000,000) to acquire, and is currently paying eight million dollars (\$8,000,000) to fifteen million dollars (\$15,000,000) in interest per year on borrowed money. This is after the residents of Kaua'i voted by a two-thirds majority to cap the rate and rise of property tax. Shortly thereafter, the County of Kaua'i sued itself to overturn the cap. Since that time, the County has spent its reserve at fifty-one million dollars (\$51,000,000) and continues to spend at a rising seven point eight percent (7.8%) compounded annual rate of growth, doubling government spending every ten (10) years. To support the Kaua'i County Council spending, bonds were issued, and are absolute and unconditional general obligations supported by the full faith and credit of the County, and an unlimited pledge of the *ad valorem* tax. Let me repeat that. It is an unlimited pledge of the *ad valorem* tax. The County has mortgaged us. Spending needs to be cut: number one, the Office of Economic Development; six hundred ninety-seven thousand dollars (\$697,000) in salaries alone; one hundred three thousand dollars (\$103,000) just for the Executives. At the same time, the County's unemployment of a five point one percent (5.1%) as of December 2013 was above the State average of four point two percent (4.2%) unemployment, and well above the prerecession peak. This Department does not work and it is not doing much good. The bus system rose from three million nine hundred thousand dollars (\$3,900,000) to four million five hundred thousand dollars (\$4,500,000); a fifteen percent (15%) increase. There are other effective and better points of transportation that can serve the community and provide a better service to them with new technologies. You have C 2014-242 where there is a six hundred thousand dollar (\$600,000) voucher coming to the Department of Transportation, and it is listed on your Capital Improvement Projects (CIP) Budget, which is only at five hundred sixty-five thousand dollars (\$565,000). This is more borrowed money and should be turned down, and it is not reflected appropriately on the budget. You have Resolution No. 2014-43— no new appointments should be made. This is to reappoint Figaroa. There should be a financial cost for any kind of employment that should be made available to the public, initially, so we know how much these positions are costing our County. The initial property tax cap should be reinstated in place in all categories and homestead and residential should be combined, so a case like Mr. Bynum's would not have to be filed. Also, California's Proposition 13 should be passed at pre-2003 levels or before in the purchase price. It should be based on the purchase price. This would simplify Finance and reduce the appraisal salaries in the Department of Finance by at least five hundred thousand dollars (\$500,000), and lawsuits like we have experienced would not cost the County millions of dollars.

Chair Furfaro: Excuse me. Your three (3) minutes are up. Please summarize quickly.

Mr. Pierce: Thank you. The government has operated on a political favoritism, selective enforcements, and the laws you have created have bankrupt the County both economically, morally, and have created class warfare. Thank you.

Chair Furfaro: Thank you for your comments. Next speaker, please.

Ms. Fountain-Tanigawa: The next speaker is Carl Imparato.

CARL IMPARATO: Aloha, Councilmembers. My name is Carl Imparato. I am here to speak about the Real Property Tax (RPT) Bills. I have three (3) points. First, I want to state my strong support to Councilmember Kagawa and Councilmember Rapozo's proposal of Bill No. 2556, which would reinstate the Permanent Home Use (PHU) tax limit, retroactive to 2014. Also, my strong support is for Council Chair's proposal, Bill No. 2557, which would create a low income property tax limit, similar to the old circuit breaker property tax limit. Taken together, these two (2) Bills would restore the equitable property tax system that protected Kaua'i's homeowners until it was dismantled last year. My one suggestion is that these two (2) Bills should be coordinated, so that homeowners Permanent Home Use tax cap is not permanently ratcheted downwards if a homeowner whose taxes are reduced by a low income credit in one (1) year subsequently loses that credit in a successive year. My second point is that I would like to state my very, very strong opposition to the Administration's Proposed Draft Bills Nos. 2554 and 2555, as they would provide for only partial and temporary tax relief, and leave in place the unjust, problem infested "*ad valorem*" tax system. These Bills were clearly designed solely to respond to the current firestorm, in hope that overtime the public will become too weary to persist in fighting the Administration on this issue. Third, I want to state my opposition to Proposed Draft Bill No. 2558, which would also be just a one (1) year palliative partial fix to the problems that were created by the elimination of the cap on the annual rate of increase of homeowner property taxes. A key premise of Bill No. 2558 is that the so-called "Home Preservation Tax Limit" would remain in effect and that people should simply be given more time to apply for it. The reality is that the Home Preservation Tax Limit is ill-conceived, arbitrary, unfair, and would be eliminated if the Permanent Home Use tax limit was reenacted. Like the Administration's Proposed Draft Bill, Bill No. 2558, is primarily intended to ease the pain on a one time basis, but it does nothing to address the root problems. If Councilmembers Kagawa and Rapozo's Bill is passed, most of Bill No. 2558 would be unnecessary, so I believe that the Council and the public should not allow Bill No. 2558 to divert attention and focus from the true solution to the problem. I thank Councilmembers Kagawa, Rapozo, and Furfaro for their initiative on this issue, and I thank the entire Council for granting me the time to provide this testimony.

Chair Furfaro: Thank you, Carl. Those Bills will be coming up in a public posting, where we will take additional comment then. Next speaker, please.

Ms. Fountain-Tanigawa: The next speaker is Glenn Mickens, followed by Ian Miles.

GLENN MICKENS: Jay, this is on the consent calendar. Is that okay?

- Chair Furfaro: You can speak on anything that you want to.
- Mr. Mickens: Right, but I know if I speak now, I cannot speak on anything else.
- Chair Furfaro: That is right.
- Mr. Mickens: Well, on the consent calendar I can, right?
- Chair Furfaro: No.
- Mr. Mickens: No?
- Chair Furfaro: You have your one chance now or you wait until the agenda item appears, and then you can come up then.
- Mr. Mickens: Okay. Maybe I will wait until then.
- Chair Furfaro: The choice is yours.
- Mr. Mickens: I will wait until then. Thank you.
- Chair Furfaro: Is there anyone else who wishes to speak during the public comment portion?
- Ms. Fountain-Tanigawa: The next speaker is Ian Miles.
- IAN MILES: Hello. I live in a single-family dwelling with my children...
- Ms. Yukimura: Can you state your name, please?
- Mr. Miles: Sorry. My name is Ian Miles. I live in a single-family dwelling with my children and grandchildren. Unfortunately, I do not charge them rent. They are trying to save up. Otherwise, I would come under your rules for when my taxes were jumping around four thousand dollars (\$4,000). In 2012, I was paying one thousand four hundred eighty-five dollars (\$1,485) and this year it went up to three thousand six hundred five dollars (\$3,605) with the removal of the cap. Next year, because I rented out one (1) room, it goes up to two thousand two hundred seventy-four dollars (\$2,274). I am caught in a combination of your rules. Because we rent out ten percent (10%) of our house, we get hit with one hundred percent (100%) vacation rental tax. The bottom line of all of this is for that ten percent (10%) that I rent out, I pay twelve (12) times the vacation rental rate on that ten percent (10%). If I take the eighty-five percent (85%) of the regular house rate, then it is ten (10) times the hotel rate. Effectively, by the combination of these rules, you are saying that even though I had the privilege of vacation rental in my area, I actually cannot do that. I just cannot with your taxes and the way the rules are structured. My wife is handicap. We enjoy doing a vacation rental because we get people from all over. There tends to be more Europeans, Australians, and Italians staying with us now. We enjoy doing this as part of our whole life, but we cannot do it. You are actually shutting down vacation rentals. If you rent the whole house, it is great. Across the street right now, there are four (4) Australian couples renting that house. They party every night. That is fine. Real estate companies can afford to do that and buy out properties as investments, but we

cannot stay there and rent a room to help make ends meet under your current rules. It is just impossible. I read through all of your rules. I realize that it is a complicated subject and it is hard to really get a grasp on the big picture for a regular person who just got a big tax bill and walks in here, trying to make sense of it all. Paying ten thousand dollars (\$10,000) of taxes does not make sense to me for renting out one (1) room, usually during the summer. I myself am a person who tends to overthink problems. I always say to myself, "Keep things simple, stupid." When I look at this whole thing, I think that maybe you have to take a step back. If you are making a rule... say your rule that kept property taxes down for years—when that changed...

Chair Furfaro: Your three (3) minutes has expired. You are going to have to summarize here.

Mr. Miles: Yes, I understand. What I would like is first change the rules to help me, but I think this whole problem needs you to go back from the start because if you make a rule that is making you make twenty (20) other rules, and then you have got the community all stirred up, maybe you should go back to that original rule you changed and rethink it. That is what I want to say.

Chair Furfaro: Thank you very much. I do want to tell you, as I said to others, that the Proposed Real Property Tax Bills will be on a public hearing at 1:30 p.m. on September 24th.

Mr. Miles: Okay. The one hundred percent (100%) rule— also at the same time, you have limited the homestead exemption, so that was a double whammy that means renting out ten percent (10%) of my house, which makes my taxes jump.

Chair Furfaro: Your point is well-taken and we are not supposed to engage in dialogue during this period. I just want to reemphasize the date of September 24th, which a public hearing will take place with question and answer from the Council as well.

Mr. Miles: Thank you.

Chair Furfaro: You are quite welcome. Do we have another speaker?

Ms. Fountain-Tanigawa: No.

Chair Furfaro: Okay. Let us go to the minutes.

There being no one else to provide public comment, the meeting was called back to order, and proceeded as follows:

MINUTES of the following meetings of the Council:

June 18, 2014 Special Council Meeting
September 3, 2014 Special Council Meeting

Mr. Kagawa moved to approve the Minutes as circulated, seconded by Ms. Yukimura, and carried by a vote of 6:0:1 (*Mr. Rapozo is excused*).

Chair Furfaro: Let us go to the Consent Calendar.

CONSENT CALENDAR:

C 2014-235 Communication (08/18/2014) from the Director of Finance, transmitting for Council consideration, proposed amendments to Ordinance No. B-2014-782, as amended, relating to the Capital Budget of the County of Kaua'i, for the Fiscal Year 2014-2015, to correctly redistribute funding sources between two (2) bond issuances for the Fuel Tanks Hanalei Baseyard project: Mr. Kagawa moved to receive C 2014-235 for the record, seconded by Ms. Yukimura.

C 2014-236 Communication (08/21/2014) from Council Chair Furfaro, transmitting for Council consideration and confirmation, the reappointment of Joseph K. Figaroa to the Public Access, Open Space, and Natural Resources Preservation Fund Commission (Anahola – Hā'ena) for the County of Kaua'i – Term ending 07/31/2017: Mr. Kagawa moved to receive C 2014-236 for the record, seconded by Ms. Yukimura.

C 2014-237 Communication (08/22/2014) from the Director of Finance, transmitting for Council consideration the following:

1. A proposed Bill for an Ordinance to amend Chapter 5A of the Kaua'i County Code 1987, as amended, relating to Real Property Taxes, to provide tax credits to taxpayers in the Homestead and Residential tax classes who received real property tax increases greater than five hundred dollars (\$500) for the 2014 tax year; extend the due date of the first half payment of real property taxes from August 20, 2014 to December 31, 2014 for all property owners that have current Home Use Exemptions; and retroactively waive the penalties and interest accumulated during this extended period, if any; and
2. Proposed amendments to Ordinance No. B-2014-781, as amended, relating to the Operating Budget of the County of Kaua'i, State of Hawai'i, for the Fiscal Year 2014-2015, to offset the estimated shortfall in real property taxes as a result of the proposed tax credits.

Mr. Kagawa moved to receive C 2014-237 for the record, seconded by Ms. Yukimura.

C 2014-238 Communication (09/02/2014) from Councilmember Kagawa and Councilmember Rapozo, transmitting for Council consideration, proposed amendments to Chapter 5A, Kaua'i County Code 1987, as amended, relating to Real Property Taxes, to reinstate the Permanent Home Use (PHU) Tax Limit, which will be retroactive for the 2014 tax year: Mr. Kagawa moved to receive C 2014-238 for the record, seconded by Ms. Yukimura.

C 2014-239 Communication (09/02/2014) from Council Chair Furfaro, transmitting for Council consideration, proposed amendments to Chapter 5A, Kaua'i County Code 1987, as amended, relating to Real Property Taxes, to provide

tax credits for low income households: Mr. Kagawa moved to receive C 2014-239 for the record, seconded by Ms. Yukimura.

C 2014-240 Communication (09/03/2014) from Councilmember Hooser and Councilmember Bynum, transmitting for Council consideration, proposed amendments to Chapter 5A, Kaua'i County Code 1987, as amended, relating to Real Property Taxes, to provide for any claim for an exemption, Long Term Affordable Rental, or Home Preservation Tax Limit application for the 2015 tax year to be retroactively applied to the claimant's real property tax bill for the 2014 tax year; to provide for an owner to submit a new "Use Survey Form" to the Department of Finance, Real Property Assessment Division by December 31, 2014 for the 2014 tax year and to receive a tax credit in tax year 2015 as determined by the Director of Finance for property that was incorrectly designated a tax classification in tax year 2014; and waives all penalties and interest for any delinquent payment due to incorrect tax classification: Mr. Kagawa moved to receive C 2014-240 for the record, seconded by Ms. Yukimura.

C 2014-241 Communication (09/03/2014) from Councilmember Hooser, transmitting for Council consideration, proposed amendments to Chapter 5A, Kaua'i County Code 1987, as amended, relating to Real Property Taxes, to allow for a property with multiple actual uses to be classified under each applicable tax classification based on the percentage of property dedicated to each use: Mr. Kagawa moved to receive C 2014-241 for the record, seconded by Ms. Yukimura.

Chair Furfaro: If you would like to give testimony, please come up. Please identify what item you are going to speak on.

There being no objections, the rules were suspended.

Mr. Mickens: Thank you, Jay. For the record, Glenn Mickens. My testimony is for Proposed Draft Bill (No. 2556). You should have a copy of my testimony. The State of Hawai'i has determined that its counties need to rely on taxation of real property as the principal revenue source for their government. It is the duty of the Kaua'i County officials to enact and administer the property tax law fairly and reasonably. Home ownership is a pillar of our society. Our people should be encouraged to make that investment of their lives and fortunes that is required for such ownership. Our government should seek to reward, not punish it. Our resident home owners and their families should never have to face taxations or tax increases that are unexpected or calamitous. Last year, repeal of the annual increase limit that had been enacted to protect resident home owners was for many a brutal assault on their justified belief that continuing home ownership would not incur massive increases in their property taxation. Bill No. 2556, introduced by Councilmembers Rapozo and Kagawa, would reverse the hasty and ill-considered repeal of the increase limit and would provide reassurance to our resident home owners that our government honors the importance of keeping the commitment made to preserve the affordability of home ownership contemplated when the home was acquired. Any Councilmember who does not subscribe to the principles of Bill No. 2556 should understand that he or she stands against the concepts that citizens have warmly supported here on Kaua'i and elsewhere as to how they wish to be governed, and may expect to face a righteous anger at Election time. I urge the unanimous adoption of Bill No. 2556. I know that there are going to be different avenues that you are going to take to reach this thing, so I hope it is completely considered before enactment of the Bill, that you

make sure you take a firm look at the total amount of what is going to happen; not “ready, aim, and fire.” Make sure that it is in place before we go ahead and do something, and then you will not have to go back and redo it again. I am not sure whether it is going to be two percent (2%) or whether it is going to be in a cost of living index, but whatever it is, I am sure it is going to be something that your wisdom will decide is going to be for the benefit of the people; the masses of the people. Thank you.

(Mr. Rapozo is noted as present.)

Chair Furfaro: Any questions for Glenn? If not, thank you very much, Glenn. We are on the consent calendar. Is there anyone who wishes to speak on the consent calendar?

JOE ROSA: Good morning, Members of the Council. For the record, Joe Rosa. I am here to speak on behalf of myself and people out there in the community who have talked to me about the so-called “lifting of the cap.” It was nice that there are people on this Council who realize that there are people out in the community and on this island that cannot afford the lifting of that cap, and that includes myself. I appealed two (2) cases previously because of things that caused my property tax to inflate to a record high that I had to go and have it looked into, and then have it restored to something reasonable that a guy could afford to pay. Just recently, people have come up to me saying that they need to do some repairs in their homes, but yet with their spending and lifting of the cap, it is between restoring their house and making it livable in a condition because things have deteriorated after forty (40) or fifty (50) years. That includes myself. We had to do some repairs, but it is costly, and then to get slapped with the lifting of the cap. When I bought my property, it was something that I bought for my life. I invested in something for my future and my life and what I dreamt about when I was in incompetent at one time to own a home of my own if I get out of the war alive. I did, and I have been living in it for forty-eight (48) years. I do not intend to sell it or anything, so why should my rates go high according to what has been selling within the community of Molokoa, Kupolo, Puakea, and wherever. That is not fair. What I pay for my house, I paid for it and I expect to live within reason; not something that is flying sky high. There is no value underneath the land that I live on. I paid for it for thirty (30) years while I worked to achieve my goal in life to own a home of my own. There are people out in Hanamā‘ulu that were given special plantation deals: fourteen thousand dollars (\$14,000) package deals and seventeen thousand dollars (\$17,000) package deals. One (1) house was sold for one hundred thousand dollars (\$100,000) and everything went up as far as prices. Why should it be like that? If a person is willing to pay a higher price, let them pay the taxes and do not penalize the other poor working people; the middle-class people that we have, which we have a great majority living on this island; former ex-plantation workers. I would like to see the cap be restored and come within reason like you pay as you can afford. That probably would end some speculators out there from coming in, just wanting to buy things, and cause inflationary prices to go up on land and everything. They had land classification prior to here in Līhu‘e on this island. In Līhu‘e, you pay the price for being in Līhu‘e. If you go to Wailua or Wailua Homesteads, there is a different value in land per foot. Today, it seems like every place is equal. Everything is urbanized land prices that is flying sky high. It is ridiculous. How can an average person own a home? Do not tell me it is fair market value because there is a lot of land to be sold here on this island yet.

Chair Furfaro:

Joe, your three (3) minutes are up.

Mr. Rosa: Yes. I will wrap it up. Me and people on this island would like to see the two percent (2%) cap restored like it is and think of the average people who live here. We are not all classified millionaires. Thank you.

Chair Furfaro: You have a question from Councilmember Yukimura.

Ms. Yukimura: Mr. Rosa, thank you very much. What is your address?

Mr. Rosa: 4611 Ekuolu Street.

Ms. Yukimura: Okay. Did your taxes go up?

Mr. Rosa: Well, it did not go up extremely high, JoAnn, because I had some restrictions on it.

Ms. Yukimura: Okay. I am glad to hear that because I would not want your taxes to go high. Apparently, some of the programs are helping you.

Mr. Rosa: Well, some of them.

Ms. Yukimura: Keep it low, right?

Mr. Rosa: Yes.

Ms. Yukimura: Very good. Thank you.

Mr. Rosa: Luckily I got a Veterans loan also.

Ms. Yukimura: Yes, that is excellent. Thank you. You deserve that.

Mr. Rosa: Thank you.

Chair Furfaro: Joe, just a footnote here. For the record, since you did not disclose which communication you were addressing, I am going to put you down for C 2014-236, C 2014-237, and C 2014-238, which are the Tax Bills.

Mr. Rosa: Yes. Thank you.

Chair Furfaro: Next speaker? If there is no one, I will call this meeting back to order.

There being no objections, the meeting was called back to order, and proceeded as follows:

The motion to receive C 2014-235, C 2014-236, C 2014-237, C 2014-238, C 2014-239, C 2014-240, and C 2014-241 for the record was then put, and unanimously carried.

Chair Furfaro: As I so noted at the beginning of the meeting, I would like to go to the Executive Session item for today, ES-755. Should we have the County Attorney up?

Ms. Fountain-Tanigawa: Yes. This would be for ES-755.

Chair Furfaro: Mauna Kea, can you please come up to read the Executive Session item for us?

There being no objections, the rules were suspended.

MAUNA KEA TRASK, First Deputy County Attorney: *Aloha*, Honorable Chair and Members of the Council. For the record, Mauna Kea Trask, First Deputy County Attorney. This is for ES-755.

There being no objections, ES-755 was taken out of the order.

EXECUTIVE SESSION:

ES-755 Pursuant to Hawai'i Revised Statutes Sections 92-4 and 92-5(a)(4) and (8), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney, on behalf of the Council, requests an Executive Session to allow Special Counsel to provide the Council with a briefing in Syngenta Seeds, Inc., et al., vs. County of Kaua'i, Civ. No. 14-00014 BMK (U.S. District Court, District of Hawai'i) and decision on further action including but not limited to filing an appeal, and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item, and decision making.

Chair Furfaro: Thank you. We do have David Minkin and his colleague here for this discussion today in Executive Session.

Mr. Trask: Yes, Chair.

Chair Furfaro: Very good. Thank you. I am going to ask for a motion and second, and see if there is anyone in the audience who would like to give testimony.

Mr. Hooser moved to convene in Executive Session for ES-755, seconded by Mr. Bynum.

Chair Furfaro: Mauna Kea, I would like to ask you to step to the side and see if there is anyone in the public who wishes to testify on this item before I call a roll call to convene in Executive Session. Seeing no one, I will call this meeting back to order. To the Clerk's Office, as it has been my practice, may I have a roll call vote to go into Executive Session? Do you have something to say?

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Bynum: Chair, I understand that there is going to be a fact sheet release today. Is that correct? I would like to know if our Special Counsel could come up and give a public statement about what is on the public

record. This is a very complex case that has many filings back and forth that are all public record.

Chair Furfaro: I will call him up.

Mr. Bynum: Thank you.

Chair Furfaro: Mr. Minkin, the rules are suspended. The question posed was, "Is Special Counsel planning to release a fact sheet today?"

There being no objections, the rules were suspended.

DAVID J. MINKIN, Special Counsel, McCorriston Miller Mukai MacKinnon, LLP: I am blinded by the blue light and I am not in Walmart, but it is the blue light special. Thank you, Council Chair and Councilmembers. Yes, I have prepared based upon discussions, a media statement that has been released to the media that has been put out there to the newspapers. It is also going to go out later today to the television stations for anybody to follow-up. I have already been contacted by the Star Advertiser. They had some questions about it. Basically, there has been a lot of discussion back and forth. The Federal Court made a decision, but there are things that got lost in the media reporting on that decision, so that is why we felt that we needed to do a media fact sheet. What you see in front of you is that media fact sheet. What it covers is where the Court went in its decision. Number one, it basically felt and decided that notwithstanding the seed company's positions, federal law did not preempt the County from doing what it did. There were a number of federal laws that were cited and the Federal Court went through them and held that no federal law preempted the County from doing what it did. Then it went to the question of state preemption, as reflected on page number 2, and it initially went into a decision-making process and held that the County has authority under its general police powers delegated by the State to do certain things to protect its community. That issue that was raised by the Plaintiffs was put to rest by the Federal Court. The Federal Court also held that the Hawai'i Right to Farm Act does not preclude the County from regulating nuisances. That was another point that the Plaintiffs in their Federal Court motions said that the Hawai'i Right to Farm Act precluded this County from doing anything; however, the Federal Court did find that there was a framework under various agriculture statutes that precluded the County and said that the County should not enter into this area that, that is something for statewide concern. The Court held invalid Ordinance No. 960, but at the same point in time, disallowed the arguments by the Plaintiffs regarding federal preemption and also disallowed certain key arguments that the Plaintiffs had argued or put forth as the state preemption.

Chair Furfaro: Okay. The reference that you are making is, in fact, the legal media comments as it relates to the Court ruling.

Mr. Minkin: Yes, Sir.

Chair Furfaro: It is not related to the discussion that we are going into with the Council today, dealing with any next step items.

Mr. Minkin: Correct because that is attorney-client privilege.

Chair Furfaro: I just wanted to make sure I got that clarified. Your press release is related to clarity for the citizens as it relates to the Court's action.

Mr. Minkin: Correct.

Chair Furfaro: Thank you. JoAnn.

Ms. Yukimura: Good morning, David.

Mr. Minkin: Good morning.

Ms. Yukimura: Essentially, the Court has said that the Plaintiffs or the seed company's claim that Ordinance No. 960 was invalid for a variety of reasons and they really narrowed it down. They actually gave us some very good information in terms of where they think the law is.

Mr. Minkin: The Federal Court did narrow it down and eliminated some of the arguments from the seed companies completely, and like you said, narrowed it down and gave us some very good guidance.

Ms. Yukimura: Right. They said that our actions as a County are not preempted by federal law.

Mr. Minkin: Correct.

Ms. Yukimura: And that our actions as a County are not preempted by the State Right to Farm Act.

Mr. Minkin: Correct.

Ms. Yukimura: Which, I think until we got this decision, we could argue both ways, but it was never clear.

Mr. Minkin: Correct.

Ms. Yukimura: So where did they find preemption was that state law, their comprehensive law regarding pesticides, does preempt the County from passing a law like Ordinance No. 960.

Mr. Minkin: The Court held that it was a comprehensive scheme and pattern. That is something that I disagree with as an attorney, but we will take that up in Executive Session.

Ms. Yukimura: Well, that was the Court's reasoning to get to its conclusion that the County is preempted.

Mr. Minkin: Correct.

Ms. Yukimura: So you have really helped to clarify what that decision has said and I appreciate it. Thank you very much.

Mr. Minkin: Thank you.

Chair Furfaro:

Mr. Kagawa.

Mr. Kagawa: Thank you, Chair. How long does a typical appeal like this take to go through the whole process? Ballpark, one (1) week? One (1) year? Two (2) years?

Mr. Minkin: Ninth Circuit is about one (1) year, maybe a little more than one (1) year.

Mr. Kagawa: More than one (1) year?

Mr. Minkin: Yes, Sir.

Mr. Kagawa: Does Judge Kurren's ruling follow some of what Mauna Kea expressed in his opinion to us?

Mr. Minkin: Some of it, yes.

Mr. Kagawa: Some of it?

Mr. Minkin: Yes.

Mr. Kagawa: How much of it?

Mr. Minkin: This is the problem and I will tell you right off. If you go to my "Plaintiff's Remaining Claims" on page number 3, basically what we attempted to do before the Federal Court was to say that number one, it was not preempted by federal law; and on the issue of state law, rather than you, Federal Judge, make a decision, certify the question to the Hawai'i Supreme Court because it has never been discussed and it has never been ruled on that there has been state preemption and we want them to try to get the five (5) Justices at the Supreme Court to rule on that. That, he did not do, and that is why... I understand your question.

Mr. Kagawa: Mauna Kea gave us a ruling during the process of Bill No. 2491.

Mr. Minkin: He gave you a legal analysis, correct.

Mr. Kagawa: Yes, a legal opinion— well, he gave one to the Mayor and he gave one to us. We did not release ours. The Mayor released his.

Mr. Minkin: Correct.

Mr. Kagawa: Was Mauna Kea's work or was his recommendation on the mark or off the mark as far as Judge Kurren's current ruling?

Mr. Minkin: If you go on federal preemption, he was off the mark. If you go on state preemption, he was off the mark on fifty percent (50%). That is the whole thing; the law is gray. If it was black and white, I would still be bartending. I would not have gone to law school. The reality is that everybody can disagree. The Plaintiffs were adamant that federal law preempted it, but if that did not hold, then every single one of their arguments on state law preempted it. The

Judge ruled no federal preemption and no state preemption on a number of key issues, but state preemption based on pesticides.

Mr. Kagawa: I have one last question, Chair.

Chair Furfaro: Go ahead.

Mr. Kagawa: If it takes one (1) year or more to come up to the final decision, what kind of volume of work does that entail for our typical attorney? Is it a lot of work? Is it monthly work? Does it just take a while because it is sitting on the Judge's desk and there is no attorney work going on?

Mr. Minkin: It has to be briefed, so if the County filed an appeal, we would have to do an opening brief. The seed companies would do an answering brief. We would then do what is called a "reply brief," and then it would get calendared for oral argument before the Ninth Circuit. Nine times out of ten, recently they have been coming down here to Hawai'i and holding it here. That oral argument would be probably about one (1) year out. Once the briefing is done, and that briefing will take place literally in the first three (3) to four (4) months, then it is on hold until we get to the oral argument.

Mr. Kagawa: Thank you, David.

Chair Furfaro: Mr. Bynum, and then Mr. Rapozo.

Mr. Bynum: Can you explain the difference between "expressed" and "implied" in relation to the state finding that overturned the Ordinance?

Mr. Minkin: Basically, "implied"—there was no statute that said, "Counties, you cannot do this." So the Court found that based upon the statutes that were out there dealing with the Department of Agriculture and pesticides, he read into it that it was implied. Basically, he gathered information from the various statutes and said, "I believe that is what the State wanted to do." It is not something where the State says, "You, County, cannot do it."

Mr. Bynum: As you mentioned to Mr. Kagawa, and I thought this was fascinating at the relative hearings that your argument in essence was, "Well, if you believe this is what the State implied, then let the State decide that. Please let the State Court decide this State issue."

Mr. Minkin: Correct. We positioned it that if you get to the state preemption argument, "You, Federal Judge, should basically pass it over to the five (5) Justices of the State Supreme Court because not only is it something that is on this island, but Maui and Hawai'i Island are also dealing with it. Let the five (5) Justices of the State Supreme Court tell us whether it is implied preemption or not." He basically refused to do that.

Mr. Bynum: Okay. On the other arguments, he said, "Well, I am not going to rule on these." So they were just kind of set aside.

Mr. Minkin: Correct.

Mr. Bynum: Just for the public, you mentioned that each one of these arguments have written documents that go back and forth before the oral hearings, correct?

Mr. Minkin: Correct. Basically, it has been fully briefed before the Federal Judge on all of the other... they had thirteen (13) claims or causes of action, the Plaintiffs. Every single one of them has been fully briefed by all sides.

Mr. Bynum: So that is why you say this is why we deserve or need an appeal, but then all of that work has already been done in essence.

Mr. Minkin: The appeal would be something different. That would be an appeal to the Ninth Circuit. If the Ninth Circuit says, "Judge, you got it wrong on state preemption," or, "Judge, you should have sent it to the State Supreme Court," and then we wait for a ruling from the State Supreme Court. Depending upon that ruling, if the State Supreme Court or the Ninth Circuit says "no state preemption," then the other motions has already been teed up and the Court would have to rule on those other motions that are basically held moot at this point.

Mr. Bynum: Thank you for explaining that process that might occur. Just back to the opinion briefly that was released by the Mayor, it basically said that we were going to lose on two, three, or four different arguments, right? In essence, the Court did not agree with that opinion on two major ones: the State's Right to Farm Act and federal preemption.

Mr. Minkin: Correct.

Mr. Bynum: The opinion said we would federally preempted, right?

Mr. Minkin: Well, there was an argument that there may be federal preemption.

Mr. Bynum: Okay. This is my last question I think. You said fifty percent (50%) right on the state preemption. Could you explain that a little more?

Mr. Minkin: Well, basically there was a belief that various state laws would preempt. The question now is that the Court has determined that some did not preempt and others did. Therefore, at the end of the day, to me it is fifty-fifty.

Mr. Bynum: For all of these briefs and opinions, those are all public record, right?

Mr. Minkin: The ones in Federal Court?

Mr. Bynum: Yes.

Mr. Minkin: Yes.

Mr. Bynum: The general public can read all of that.

Mr. Minkin: Yes.

Mr. Bynum: Is there an easy place where that is all compiled that the public could access?

Mr. Minkin: I am trying to think. I know various media outlets have direct links, but offhand, you would have to go to the Federal Judiciary to get that. If that is something that the County wants us to help provide that, we could do something along those lines.

Mr. Bynum: Thank you. I appreciate that.

Chair Furfaro: Mr. Rapozo, and then Mr. Hooser.

Mr. Rapozo: Thank you, Mr. Minkin, for being here today. On the appeal process, you are saying a little over one (1) year, but it could go much longer than that, right?

Mr. Minkin: It could, potentially.

Mr. Rapozo: I would assume. I do not know if our County Attorney is here, but if we have any appeals currently. I am not sure if we do or not.

Mr. Minkin: Ninth Circuit tends to do their things right around twelve (12) or thirteen (13) months. State Supreme Court or Intermediate Court tends to be longer.

Mr. Rapozo: If, in fact, the Ninth Circuit overrules Judge Kurren's decision, the result would be what? Would it be sent to State Court?

Mr. Minkin: No. Well, it could do two things: it could send it to the State Supreme Court to decide...

Mr. Rapozo: That is what we are asking, right? Is that not what you just said we are asking because of the state preemption, that should not be heard in a Federal Court and that it should be in a State Court?

Mr. Minkin: Correct, but the Ninth Circuit could determine itself without even sending it over to the State Court that Judge Kurren got it wrong on the state preemption.

Mr. Rapozo: Okay.

Mr. Minkin: Then it would come back to Judge Kurren for decision on all the other cross motions that are already fully briefed.

Mr. Rapozo: What is the timeframe on that scenario?

Mr. Minkin: If it comes back in twelve (12) months to fifteen (15) months, it could be another three (3) or four (4) months after a decision by the Ninth Circuit.

Mr. Rapozo: Okay. If, in fact, the Ninth Circuit sends it to State Court...

Mr. Minkin: To the State Supreme Court— that could probably... certified questions are usually handled in about twelve (12) to fifteen (15) months.

Mr. Rapozo: Okay, so we are looking at a long process.

Mr. Minkin: Yes.

Mr. Rapozo: The other question is regarding the media fact sheet. Is it true that a press release has been sent out or will be sent out?

Mr. Minkin: I sent this out to some of the media outlets. I am going to send it out to the rest of them because I keep getting phone calls as to what the decision says, and rather than responding individually, here is a document and this is how we read what the Federal decision said.

Mr. Rapozo: The only reason I ask is because normally when we get anything that goes out to the media, it runs through our County. I am just curious if our County Attorneys or Administration has looked at this and approved it.

Mr. Minkin: I sent a copy over to the Administration. I have not heard back one way or another. I indicated that it was going to go out.

Mr. Rapozo: Okay. That is all I have, Mr. Chair.

Chair Furfaro: Mr. Hooser.

Mr. Hooser: Just to acknowledge that there are certain things that we cannot talk about today that we talked about in the Executive Session last week, which not everybody was able to participate in. Just to be clear on the issues, the federal preemption— basically, this Judge said that the federal government allows... there is nothing in the federal law that says that counties cannot regulate pesticides.

Mr. Minkin: Correct.

Mr. Hooser: We all get used to the word “preemption,” but not everybody in the public that is listening knows. I think the other thing that has very strong relevance and importance, and correct me if I am wrong, that the Judge also ruled that the Counties have the right to regulate agriculture in some circumstances.

Mr. Minkin: Correct.

Mr. Hooser: And to regulate nuisances?

Mr. Minkin: Yes.

Mr. Hooser: Okay. Given that the appeal process, if the County should decide to appeal, is a long process; there is nothing to preclude this Council, or any county government in Hawai'i for that matter, to put forward a regulation that would regulate agriculture and nuisances under the guidelines of this decision.

Mr. Minkin: If you follow this decision, that is correct. Also, if you look back, it basically says that the State can do it also. It is something that could be done at the state level. The Court held that under your police powers, you can regulate and protect your people.

Mr. Hooser: Okay, so it is not like this whole issue, if we want to move forward to increase protection for the community, it is not dead in the water, but we would just be best advised to follow the guidelines.

Mr. Minkin: You are constrained by this decision, and yes, you would have to follow the guidelines of this Court decision, correct.

Mr. Hooser: Okay. There was another memo that was distributed to us today. Are we going to be discussing this? It is not stamped confidential or anything. This is the one from Mr. Minkin, dated September 8, via E-mail.

Chair Furfaro: I believe that was directed towards the Councilmembers for discussion in our Executive Session.

Mr. Hooser: Okay, so when we are in Executive Session, we can discuss whether or not this is public information or not in Executive Session.

Chair Furfaro: I am going to say to you that it has been a practice of our group that when we release items that are discussed in Executive Session, they are then done by a super majority of the Council, not prior to us getting into the discussion. That option does exist, but we would first need to go into Executive Session.

Mr. Hooser: Okay. Thank you.

Chair Furfaro: JoAnn, you have the floor.

Ms. Yukimura: So the information released does not address the Environmental and Public Health Impacts Study, also known as the "EPHIS." Can you tell us what your read of the Court's decision is?

Mr. Minkin: The Court's decision is basically that he referenced the four (4) parts of the Ordinance, so he basically struck down the Ordinance. Given that situation, I have now learned that there was a separate Resolution and separate funding, but that is not the scope of my contract. That is something the County Attorney should be dealing with and focus on how to go about, if at all, based upon the Court's decision, just like Councilmember Hooser indicated "where do we go from here and how do we go from here?" Basically, I would defer to the County Attorneys on that going forward on the EPHIS issue.

Ms. Yukimura: You are dealing with a decision of the Court and that is what you have been hired to do, so we need to know what that ruling says about the EPHIS.

Mr. Minkin: Basically, the entire Ordinance was struck down. There was a component of the Ordinance that had an EPHIS and that has been struck down by this Court.

Ms. Yukimura: But the EPHIS is not regulatory, so it is likely that it will not be covered by the theory of preemption. Is there not a way to get clarity?

Mr. Minkin: I think that is something that you need to take up with the County Attorney because I am hired as litigation counsel. I respectfully understand your question, Councilmember Yukimura, but it is something that is outside the scope of my retention under the contract. I do not want to step on other toes and other individuals that are tasked with this problem.

Ms. Yukimura: I have asked you that question before and I have not gotten an answer.

Mr. Minkin: That question was asked in Executive Session...

Ms. Yukimura: No, it was asked in an E-mail regarding this public document.

Chair Furfaro: Let me ask you if I may intercede for a second. I would like to be able to say that any strategic thinking going forward on what was a separate budget item and separate Resolution about the political subdivision of the County of Kaua'i, being able to gather information and gather data, because nobody made a bad decision because they had too much information. I would think that strategy would be discussed in Executive Session. I would also like to follow-up as I am wondering the State's role in that.

Mr. Minkin: I understand. There was an E-mail from Councilmember Yukimura and I have not responded to that because that is beyond the scope of my contract and I am not going to do it.

Ms. Yukimura: Well, then you should have responded that to me.

Mr. Minkin: I just did. I looked at the issue and I spoke to the County Attorneys, I indicated, and that is it.

Ms. Yukimura: I would have appreciated a courtesy of an E-mail response.

Chair Furfaro: Okay. David, you can give us, as a body, more clarification and what is covered in duties in the contract when we go into Executive Session. That is what I would appreciate.

Mr. Minkin: Not a problem.

Chair Furfaro:

Okay. Tim.

Mr. Bynum: There were Intervenorors in this case and there were a number of decisions. Is it possible that others would choose to appeal? What is the County's role of others?

Mr. Minkin: My guess is that others will be appealing, including potentially the seed companies, Intervenorors, and then there is a decision as to whether there was a blessing to go forward. The blessing will allow us to respond. There were times where I have been involved in cases where if there is not a blessing going forward, we just basically take no position and ride it out.

Mr. Bynum:

Okay. Thank you.

Chair Furfaro: Thank you, David. I think I was at a position where I was about ready to call a vote to go into Executive Session. I suspended the rules just for this one question, so I will continue with the Clerk. Our meeting is back in session. Mauna Kea, did you want to speak to the group? If so, go right ahead.

Mr. Trask: For the record, First Deputy County Attorney, Mauna Kea Trask. I would just like to state the parameters. Mr. Minkin will be there in Executive Session to advise you on the case. We have Deputy County Attorney Mona Clark here to talk about the EPHIS issue. She was not with the Office when we went through this, so she has been assigned to it. With the Council's permission, I would like to correct the record as far as one point that was stated today as far as federal preemption that was covered in the opinion.

Chair Furfaro: I think if you can offer some clarity, it is always welcomed. Go right ahead.

Mr. Trask: Thank you. Again, this is just on page number 42 of the Mayor's opinion that was previously released to the public late last year. It is a long opinion and it is what it is, but I would just like to state, "Given the U.S. Supreme Court's holding in Wisconsin Public Intervenor vs. Mortier, it is obvious that the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) would not preempt the Council from enacting Bill No. 2491. However, given that the Supreme Court has stated that FIFRA expressly authorizes allocation of regulatory authority to the absolute discretion of states themselves, the operative question with regard to the tenets of Bill No. 2491's regulation of pesticide use is: whether the State has preempted the County from enacting pesticide regulations..." So the opinion covered federal preemption. It recognized that Mortier is dispositive on that, but the other issues followed. I would just like to correct that for the record. Thank you.

Chair Furfaro: Mauna Kea, I am going to ask Mr. Minkin up again just to further comment on that particular piece, but I would like to get to a vote. Thank you for your time.

Mr. Trask:

Thank you.

Mr. Minkin: There was that federal case out of Wisconsin that said certain things; however, the seed companies argued that there were

amendments to the various act. FIFRA, as well as other federal statutes, and those failed by the decision of the Court.

Chair Furfaro: Thank you. We are back in session and we are going to have a vote to go into Executive Session. I would like a personal moment of privilege after the vote. Jade, may I have a roll call to go into Executive Session, please?

There being no objections, the meeting was called back to order, and proceeded as follows:

The motion to convene in Executive Session for ES-755 was then put, and carried by the following vote:

FOR EXECUTIVE SESSION:	Bynum, Chock, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Chair Furfaro: We will be going into Executive Session. On a personal privilege, I would like to say thank you to Bruce Hart. He brought avocados for all of us today, celebrating his forty (40) years as a farmer on Kaua'i. Bruce, thank you very much. We will have guacamole for lunch. Also, everyone, we started at 8:30 a.m. On the consent calendar, I gave as many people an opportunity to follow our Rule 13(e), but we will be in Executive Session and the Chambers will need to be emptied until we return.

There being no objections, the meeting recessed to convene in Executive Session at 9:35 a.m.

The meeting reconvened at 11:37 a.m., and proceeded as follows:

Chair Furfaro: To the Clerk, I would like to make note to those that were aware of us going into Executive Session. The Executive Session item has been deferred for another week. Since I think we have a number of people here from the Ko'olau area, I would like to go into that particular item that is coming to us from the Planning Department as it relates to a request from the legal representatives of Kahuaaina. They have sent us a letter to serve as a notice that Falko Partners LLC, formally withdraws the following matter set for the September 10, 2014 Council Meeting. I have been asking for clarifications from Planning on what the procedural steps are on the subdivision withdrawal, and none of them are available to us today because they are at the Hawai'i Congress of Planning Officials (HCPO). At that point, I would like to get this item read. If there is anyone who would like to give testimony today, please come up. I will defer this item until I get my answers from the Planning Department.

Mr. Hooser: Chair, when the time is appropriate, I have a question to the County Attorney on this.

Chair Furfaro: Sure. Do we have a County Attorney in the audience? Would you give the County Attorney's Office a heads-up?

Mr. Kagawa: I believe that attorney was Ian Jung, right?

Chair Furfaro: I think he is just referencing a County Attorney. He is not referencing specifically Ian because he is not here.

Mr. Hooser: I will state my question for the record. Basically, this communication says, "Notice that Falko Partners hereby formally withdraws the following matter," and what they are withdrawing is a communication from the Deputy County Attorney. It seems like the Deputy County Attorney is the one that makes the decision on whether they want to withdraw it or not.

Chair Furfaro: That is where the uncertainty is on not knowing the clarity. As a Planning Director, I am wondering what they are actually withdrawing.

Mr. Hooser: Otherwise, we can wait until the item is up again. You are asking for a deferral, right?

Chair Furfaro: Yes, I will have it deferred. I will just take testimony within the time limits, and then the item will be deferred. That is my plan, anyway.

Mr. Hooser: Okay. Thank you, Chair.

Chair Furfaro: Let us read that item.

There being no objections, C 2013-271 was taken out of the order.

LEGAL DOCUMENT:

C 2013-271 Communication (07/16/2013) from Ian K. Jung, Deputy County Attorney, recommending Council approval of a Grant of Pedestrian and Parking Easements relating to Kahuaina Plantation Subdivision (S-2007-02) and Kahuaina Plantation Subdivision Phase II (S-2009-15):

- Grant Of Pedestrian And Parking Easements; concerning real property identified as Lot 15-A (TMK (4) 5-1-003:006), Lot 15-D (TMK (4) 5-1-003:032) and Lot 15-K (TMK (4) 5-1-003:039)

Mr. Rapozo moved to receive C 2013-271 for the record, seconded by Mr. Kagawa.

Chair Furfaro: Okay. Is there anyone in the public who wishes to speak on this item? Please come up.

There being no objections, the rules were suspended.

RAYNE REGUSH, Sierra Club Member: Good morning, Councilmembers. Thank you very much. Rayne Regush from the Sierra Club for the record. I am speaking on behalf of Sierra Club, Kaua'i group, and we have been concerned for more than one (1) year about the numerous unresolved issues related to this proposed Grant of Easement and we have highlighted those problems in previous testimony. We are sad too that so little was accomplished to address those

issues. Now that Kahuaina Plantation has sold, it seems likely that the repeated delays and developers request for deferrals were simply stalling tactics. So regarding this property sale, it really is a victory for residents. There is far better shoreline access along the traditional lateral trail, known as the "Ala Loa" than the proposed *mauka/makai* easement that would have been provided. Should the new owner decide not to subdivide the three hundred sixty (360) acre parcel and the subdivision permit is withdrawn, then the public's ability to resolve the Ala Loa issue is really enhanced and it is relieved from the anticipated threat of multiple property owners. Again, the loss of the proposed Grant of Easement really pales in comparison to being able to preserve a far more important historic trail. Again, the easement needed to be about safe transit along our costal trails and implicit in the subdivision condition to provide beach access. What that developer was proposing... the route that was being proposed down a steep, rocky embankment, misleadingly called "natural stone steps" to the splash zone really did not comport with the obligation for a safe transit. Thank goodness for the public's sake that this easement is off the table now and the traditional trail will remain the safest route away from the splash zone. As you may or not know, the 2014 State Legislative Budget allocated one hundred seventy thousand dollars (\$170,000) in funds for the Historic Ala Loa Trail Kaua'i Restoration and Management. Further, it acknowledged that the Ala Loa trail traverses private property and is to be adopted into the Nā Ala Hele Program. Funding includes an archaeological survey at sixty thousand dollars (\$60,000), an Environmental Assessment (EA) for sixty thousand dollars (\$60,000), and a metes and bounds land survey for fifty thousand dollars (\$50,000). This is really great news, unlike the responses that several of you had received from the Department of Land and Natural Resources (DLNR) not too long ago. We encourage the Council to exercise its authority to help protect this significant heritage trail and that State and County agencies should be partnering, working together to uphold this public trust responsibility. We would like to see the County Council write to the State Historic Preservation Division (SHPD), the Office of Hawaiian Affairs (OHA), and to the Department of Land and Natural Resources to offer the County's support for resolving the Ala Loa access issues on behalf of your Kaua'i residents. Again, this Ala Loa provides far better coastal access than the proposed Grant of Easement. *Mahalo* for your time.

Chair Furfaro: Thank you for your testimony. Mr. Rapozo, I asked for a deferral, not a receipt because I do not have some answers back from the Planning Department. Can I ask you to revisit that motion?

Mr. Rapozo withdrew his motion to receive C 2013-271 for the record, Mr. Kagawa withdrew his second.

Chair Furfaro: We all understand that when it gets to the end here, I am going to ask for a deferral. We have some questions for you, Rayne.

Ms. Yukimura: Aloha, Rayne. I agree with you that certainly the news about the new owners is good news in terms of the subdivision not occurring there. I think that has been a long concern. I have a question about the state budget item that you mentioned. I wanted to ask about the nature of that appropriation. Was it made to DLNR? Was it specifically outlined for the Kahuaina parcel or for the Ala Loa in general?

Ms. Regush: I can make a copy of this for clarity.

Ms. Yukimura: Okay, and for the purpose of the listening audience?

Ms. Regush: It does not say in the *ahupua'a* of Waipake, but with all of the correspondence from the Nā Ala Hele and community members to DLNR, the Legislature knows that this is a hot issue; the Ala Loa along that coastline connecting to several *ahupua'a*. As we move forward with implementing this budget item, it will be established.

Ms. Yukimura: So these moneys went to DLNR?

Ms. Regush: Again, I will gladly make a copy of this for you.

Ms. Yukimura: Okay. Thank you.

Chair Furfaro: I would like to have a copy of that for the Council.

Ms. Regush: Certainly.

Chair Furfaro: Thank you. Vice Chair.

Mr. Chock: I just wanted to clarify that I think it was the same question about where the fund is going. The second part of that would be to make a request, if it has not been done already— we are looking for the Council to participate in supporting it to have maybe a collective effort between the organizations like the Nā Ala Hele or the Sierra Club, and as I know others out there with the same interest and looking at the Ala Loa and maybe try to consolidate these funds to come together around taking some initiative, so that there is little bit more of a plan that we can help support from the Council level.

Ms. Regush: Yes, I agree. I think it is important for the County to express interest in partnering. There is overlap with the Public Access, Open Space, and Natural Resources Preservation Fund Commission certainly. On behalf of your constituents, you should certainly be in the loop about what is moving forward regarding this historic trail on Kaua'i, so all of the communications within the State should be channeled to some entity here at the County as well.

Mr. Chock: Absolutely. My question would be has there been any collective effort between the organizations that you are speaking of in order to come together? Thus far, I have heard interest from many different organizations, but not as one (1) voice, and that is something I think the Council could stand behind again and work cohesively with the State.

Ms. Regush: Right. Perhaps with a resolution to express your interest in partnering is one avenue. Because I also serve on the State Nā Ala Hele Advisory Council, I know we will have this item on their agenda as well. I am not sure who will actually be convening these partnering efforts, but ideas are welcomed.

Mr. Chock: That is my interest. Thank you.

Ms. Regush: Thank you.

Chair Furfaro:

Mr. Bynum.

Mr. Bynum: Rayne, thank you for following this issue with a lot of other community members. I just have a question from your perspective. I have already heard criticism of the Council like, "You have dragged your feet on this and now you are going to lose this beach access." It is because of the property sold. To me, this is good news for the Ala Loa in essence because we were being pressured to move forward with a subdivision that would have created private property right across this trail.

Ms. Regush:

That is correct.

Mr. Bynum: From your perspective, this at a minimum keeps that from happening and buys us time for us to try to address the Ala Loa issue.

Ms. Regush:

Correct. The property sale is a win.

Mr. Bynum: That is your perspective. My concern is that Bill Aila and others were not responsive to me in the lead up to this and now we have this funding. Do you think they are going to be responsive now because it is not a hot issue that they have to deal with?

Ms. Regush: I think the snowball is rolling down the mountain, so I think there is just enough community interest and participation from various entities that I am going to stay positive about it for now.

Mr. Bynum: Okay. That is helpful to see if you had that same perspective that the tides have turned.

Ms. Regush: Because at the County level, the Public Access, Open Space, and Natural Resources Preservation Fund Commission have been very diligent on following this issue and keeping it on their agenda as well because they are looking for resolution too and that partnership opportunity.

Mr. Bynum: Thank you for mentioning that because the Public Access, Open Space, and Natural Resources Preservation Fund Commission have been pretty active and assertive with us about their desires as well. Thank you very much.

Chair Furfaro:

Mr. Rapozo.

Mr. Rapozo: Thank you, Rayne, for being here. Are you folks working with anyone in the Administration as far as a liaison with the State or is all of the information just being funneled through the County process?

Ms. Regush: Do you want to name a name? Do you have any suggestions?

Mr. Rapozo: I just want to know if there is anyone in the Administration that is working or advocating for this on Kaua'i as far as the Ala Loa is concerned.

Ms. Regush: Not that I am aware of at this point.

Mr. Rapozo: Because we get bombarded with E-mails about the Ala Loa and we have tried to send letters to DLNR. We get the response that "We are not interested in addressing this issue at this time." Maybe now with the sale of the property and no conflicting landowner, they will change their mind. I do not think so.

Ms. Regush: Well, I think this legislative allocation speaks volumes and I think this is a turn in the tide.

Mr. Rapozo: I hope so. It is no different than this Council appropriating money to accounts at the Administration and they just choose not to use it. At the end of the day, it is still DLNR's call, not the Legislature. I think that is where we have to work. We have to work with DLNR. I think Mr. Chock was saying that we should come together and explain... I think a lot of those guys have no idea what the heck an Ala Loa is. They know what the definition is, but I do not think those guys in Honolulu know the impact of this Ala Loa on the island, and I think that is the problem. I asked for a fieldtrip as well and the response from the State was that they did not have enough money to come to Kaua'i. Number one, they do not have a clue; and number two, they do not have the desire. That is something we have to overcome. I am just thinking that we can provide a resolution and stuff like that, but hopefully we can get the Administration involved as well, whether it is Planning or the Public Access, Open Space, Natural Resources Preservation Fund Commission, and again, going in line with what Mr. Chock is saying, to come up with a collaborative effort to try to get their attention and say, "Hey, we want to preserve this historic trail."

Ms. Regush: I agree.

Mr. Rapozo: Thank you.

Ms. Regush: Thank you.

Chair Furfaro: Rayne, thank you very much.

Mr. Bynum: I have one follow-up. Rayne, was this funding in the Governor's budget or was there legislation that put it in?

Ms. Regush: It is a supplemental budget request from the legislative budget system and it adds funds for the Historic Ala Loa Trail Kaua'i Restoration and Management dollar amount.

Mr. Bynum: The initiative came from the Legislature to add the funds, not from the Governor?

Ms. Regush: Let us see: "Detail of Governor's Request." How they itemize it for the Environmental Assessment, the Archeological Survey, and the Metes and Bounds Land Survey are listed on the line that says, "Detail of Governor's Request."

Mr. Bynum: But we do not really know what their intention is for these funds because they have not been willing to talk to me about it.

Ms. Regush: Again, this is a change in the tides.

Mr. Bynum: Okay. Thank you.

Chair Furfaro: I do believe that over the last few years, you have had some correspondence from myself as Chair to the State.

Ms. Regush: Yes. Thank you.

Chair Furfaro: I think there has been some lobbying on our part. We have had the State people over to chat, even when we were down at the old Hale Kaua'i. You are bringing some good news and hopefully it is on somebody's radar screen appropriately.

Ms. Regush: Yes. I look forward to working with the proper parties and the County going forward.

Chair Furfaro: So you do understand that I am going to ask this item to be deferred at the end in two (2) weeks when we have some of the legal guys here to talk to us because the item that is on the agenda— I want to remind everybody that the item that is on the agenda is actually the legal document. It is not any other moving parts other than the legal documents about the parking area and so forth.

Ms. Regush: For the Grant of Easement and parking, correct.

Chair Furfaro: Yes.

Ms. Regush: Thank you.

Chair Furfaro: Thank you very much. This item is going to be deferred. Is there anyone who wants to give testimony? Again, I am going to say that this has come out of Committee and it has been my responsibility to try and stay focused on the work being done in Committee before it comes to the full Council, so stick to the legal, posted agenda item.

TIM KALLAI: *Mahalo*, Council. Thank you so much. Tim Kallai for the record. First and foremost, I always want to thank all of you for your participation through this process for the Committee that was looking at the subdivision and holding the space with us on this. If I could only reiterate and the words that Rayne had just put out as well too, I think that this is a very good thing that has happened for us and not one that we should look at in a negative vain. We may not have gotten what we initially had set out to do, i.e. to get the easement to the beach, but that does not preclude us from still using ways that have always been there and will continue to be there for us to be able to get there. Thank you so much. In the sense that it is still intact and going to remain as a glorious piece of parcel out there for all of us to enjoy in the future, as well as for the recreational purposes down there as other cultural gathering rights and things of that nature are still going to be intact, and applied to you as well for entertaining the thought. If there is any way possible after the deferment if in the future, we can look at the Ala Loa as an agenda item. I think that would be a wonderful thing to then continue the conversation or discussions thereon. I would appreciate that, but I just

want to thank you for your part in this and for the way that it has not unfolded. We see it as still being a very beneficial thing that will help us progressively move forward. *Mahalo*, Councilmember Chock, for putting that out there, that somehow we get to all of the different factions coming together on the forefront of this and looking as an alternative to the easement approach. That is consolidating our efforts with the different departments and organizations to focus on a very vital and important cultural resource, and that is the term we use as "Ala Loa," so *mahalo* for that. That is basically my testimony.

Mr. Bynum:

Thank you.

Chair Furfaro: I have been sharing this with the different Committee Chairs, but when we get to the Council piece, all of the work should be done and we are looking at a "yay" or "nay" on accepting or documenting a piece. You folks should consider maybe talking to the Planning Committee Chair of the Council and not having something on the Ala Loa worked on in Committee, but maybe have something in the way of a joint working group. We can certainly make the Chambers available to you, so that we all know what we are looking at before it is actually on the Council agenda. The working group includes some members of the Council, Planning, and the Public Access, Open Space, and Natural Resources Preservation Fund Commission, and so forth. I would encourage that. We are going through Committee Meetings that one (1) item is lasting four and a half hours (4.5), and it is 9:00 p.m. and we are still doing Council business. I would encourage that.

Mr. Kallai: *Mahalo nui.* I would love to facilitate just so that we have forward progress in the most efficient and easiest fashion to deal with. Thank you.

Chair Furfaro: I am sure between Mr. Chock and Mr. Bynum, they would be glad to see if they could encourage a joint working group.

Mr. Kallai: *Mahalo nui.*

Chair Furfaro: Do you have a question?

Mr. Bynum: I just have a follow-up to your comments. Tim, you might recall that I talked to you earlier in the year about doing a resolution in support of the Ala Loa. I talked to you and Hope. We have a staff assignment here to do that, but then the issue became so contentious with this, so we was like, "What is the County's role and how do we move forward?" The interest that is being expressed by all of us here is pretty great on the Council and we have mechanisms to deal with it. Do you recall those conversations?

Mr. Kallai: I do, and that is why I applaud here to the utmost for your interest on this and for kind of taking the ball with it.

Mr. Bynum: Well, I did not want you to think that I forgot it and that we did not move forward because all of these issues and dialogue with the State. Thank you very much for your testimony.

Mr. Kallai: Thank you very much. I really appreciate it.

Chair Furfaro: Thank you, Tim. The item will be back as a legal document in two (2) weeks. Is there anyone else who would like to speak? Come right up.

HOPE KALLAI: *Aloha.* My name is Hope Kallai. I wanted to thank everybody for all the time that we have spent on this easement consideration. I, too, consider it a win. The fact that we are not getting seventy (70) houses and seventy (70) guest houses on that property is a blessing for our whole community. We did not lose that easement. The easement was never in a way, shape or form, ready to be accepted. We are taking heat in the blog sites for losing this easement, but the easement that ended five hundred eighty (580) feet from the beach was not beach access. An easement that ended at a twelve (12) feet cliff was not beach access. The fact that the property gets preserved without being an (inaudible) subdivision is a blessing and I am very grateful for that. I am in confusion like everybody is to how our subdivision gets put to bed. I hope that when the deferred item appears on the agenda, we will have some answers as to what happens to all the tax map keys that have been created and the Kuleanas that were moved, changed, and enlarged; and the fifteen (15) water meters that been banked for a subdivision that is not going to happen. I really do not know—the Ala Loa money is a DLNR thing. I believe the logical first step is with the State Historic Preservation Division and our new Kaua'i Archaeologist has put to her bosses "how do we start this one rolling" because the historic Ala Loa location has to be located before Nā Ala Hele comes in. The archaeological feature has to be located first. That is what the sixty thousand dollars (\$60,000) is for on that. I really look forward to coming together as a working group or coalition to present this to the State as a unified County voice. However, you guys can make that happen. I totally applaud it. Thank you for all of your time. It really is a win for our community in the long run. I do not know who these guys are that bought it, but I am grateful. I am very hopeful that the Ala Loa will be honored. One of the original considerations was to turn the (inaudible) over to Hawai'i Island Land Trust (HILT) and to make a conservation easement. Maybe that will be back on the books. We still have the Ala Loa and still have access. Beach access that did not go to the beach that was not safe for people is not a lost because we never had it anyway. Thank you for all your time and consideration with this. I hope we have learned that beach accesses need site visits to do this process. Thank you.

Chair Furfaro: Thank you, Hope. Is there anyone else who would like to testify on this item?

Mr. Rosa: Good morning. For the record, Joe Rosa. Previously, I was here to question the language of the word "Ala Loa." When I was working with the Department of Transportation when we had service, "Ala Loa" was noted as a street or a road. A street and a road is something big and wide. "*Ala hele*" was referred to as a trail or a path. What are we looking for? What are we doing? Are you providing a roadway, which would be an Ala Loa or is it an *ala hele*; a path or a trail? They have to get their language straight. Ala Loa is a road or a street when we did surveys using old Kuleana maps and stuff. *Ala hele* was a path or a trail. There is a big difference: a roadway or street for Ala Loa and *ala hele* for a path or a trail. They should get the language straight because if they said that they want an Ala Loa, that means you have to widen the road. If it is an *ala hele*, it is a path or trail. Thank you. I will leave you with a thought.

Chair Furfaro: Is there anyone else who would like to speak on this item? If not, I will call the meeting back to order. I am looking for a motion to defer. Is there any discussion?

There being no objections, the meeting was called back to order, and proceeded as follows:

Ms. Yukimura: Before a deferral, I am going to ask that we also post an Executive Session, just in case we have some questions that have to be answered in Executive Session. I do not know if there are or not, but I just want to have the option in case we need it.

Chair Furfaro: That was one of my requests in my questions to them on procedurally, "How does this get withdrawn?"

Ms. Yukimura: Okay. Thank you. I am grateful for the community who has come forth to testify today. I am going to reserve any more comments to the next time after we have been fully briefed. Thank you.

Chair Furfaro: Anymore discussion?

Mr. Rapozo: I just found out yesterday that if part of the condition of this application was that if the property sold before the subdivision was made, that in fact, the landowner would be responsible for their contribution for the affordable housing. What I understand is because of the sale, the former owner has, in fact, paid the County about one million dollars (\$1,000,000) or maybe more to be used for affordable housing. That was a good thing that I want to commend publically. I want to thank the Planning Commission or whoever was responsible for putting condition in and seeing that it was actually concluded. The money has been deposited. I see Steve nodding his head. That is another positive that came out of this sale. I just wanted the public to know that that condition was enforced and completed. Thank you.

Chair Furfaro: Thank you.

Ms. Yukimura moved to defer C 2013-271, seconded by Mr. Rapozo, and unanimously carried.

Chair Furfaro: Okay. Let us go the Real Property Tax Bills.

There being no objections, Proposed Draft Bill (No. 2554) was taken out of the order.

BILLS FOR FIRST READING:

Proposed Draft Bill (No. 2554) – A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAXES (*Real Property Tax Relief for the 2014 Tax Year*)

Chair Furfaro: As I mentioned this morning, my intent on these tax bills was to remind everyone that I just want to get them received on this first reading, so that we can schedule the appropriate public hearing. When will those public hearings be scheduled?

SCOTT K. SATO, Council Services Review Officer:

September 24th.

Chair Furfaro: Okay. If I could keep the focus on each of the Bills, we would like to move them rather rapidly, so we can schedule the public hearing as such. What is that Bill number?

Mr. Sato:

We are on Proposed Draft Bill No. 2554.

Ms. Yukimura moved for passage of Proposed Draft Bill (No. 2554) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for September 24, 2014, and that it thereafter be referred to the Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee, seconded by Mr. Bynum.

Chair Furfaro:
to testify on this first Tax Bill?

Is there anyone in the audience who wishes

Mr. Sato:
"Kaipo" Asing.

We have one (1) registered speaker, Bill

Chair Furfaro: Okay. Please come up. Welcome, Mr. Asing. I understand that you have three (3) slides that you want to use in your presentation, so I am going to give you the whole six (6) minutes and you can run the slides.

There being no objections, the rules were suspended.

BILL "KAIPO" ASING: Yes. I kind of did not prepare as well as I would normally like to, but it is what it is, so I am going to do the best that I can. Those slides will help me explain what I want to convey. Before I put the slides on, let me just say this: good morning, Council Chair Furfaro. For the record, my name is Bill "Kaipo" Asing. For those of you who may or may not know me, I am a former Councilmember having served twenty-eight (28) years on this Council. I have also served as mayor of this County and I have served on every position on the County Council. I have chaired every committee chair. I just wanted the public, for those that may not know me, to understand my background and where I come from. I would also like to explain that I was here when the State transferred the taxation over to the County. I am very familiar with the State's position and what they were doing, and the position that the County had when it was transferred over to the County. I was also on the statewide task force with Mr. Yamashiro, who was the Chair of Hawai'i County. That task force was put together to guide the transition of the State to County taxation. For your information, you might not be aware that at one particular time, any measure that a County had that wanted to implement could not be passed without the concurrence of the other Counties. It was that strict. Then we got away from that. At that time, it was very, very strict. Their tax measure is an example. You could not do it by yourself. You needed the concurrence of all the Counties, otherwise it was no good. I was also privy to be a member here on the County Council when we first initiated the time share issue. Time shares were not taxed before. That is an issue that you might not be familiar with, but you can have two (2) units at that time in one (1) condo and have one (1) as a residential and the other as time share. The reason given was that "I could not understand the reason why you are taxing the time share because here is a unit and here is another unit. They are both exactly the same. Because it is time share, you

taxed it differently. Why? What is the rationale behind it?" I have a whole history of that and why it got taxed, how it got taxed, and the reasoning behind it. Some of the reasoning is very poor. I wanted to give you that background. On August 28, 2013, the Council passed this Bill that we have before us; not this particular Bill, but I call it the "problem bill." Can I have the first slide, please? I am going to read some excerpts from the Council Meeting. At the very end of the passing of this Bill, we have comments by all Councilmembers. I want to read Councilmember Kagawa's testimony. I am not going to read the whole thing because I do not have the time, Chair Furfaro. I will just read some of the areas that I highlighted. "I am just scared of what the ramifications are. I am just worried that there will be people hurt in this legislation. I will be voting 'no' today, but it is not to discredit your efforts. It is more of the feeling of having being rushed by this today. I hope the intentions of the Bill do come forward and you will get the credit..." This is referring to both Mr. Bynum and Steve, who is the Finance Director. "I hope the intentions of the Bill do come forward and you will get the credit along with Mr. Bynum and so forth, of who have worked on this Bill. If things turn out bad and this Bill does not work as intended, then I think all of you will shoulder the blame because I have made my plea today that we sit down, have that roundtable, and spend a few months or what have you on working on something that maybe is a combination of both; a hybrid." Being rushed. Why rush? "I need more time" is the concern of a Councilmember. "For those reasons, I will not be supporting this Bill today." Next slide, please.

Ms. Fountain-Tanigawa:

Chair, that was six (6) minutes.

Chair Furfaro:
Mr. Asing.

Okay. I am going to let you go forward,

Mr. Asing: Thank you. This is Councilmember Rapozo's comments prior to the vote being taken. Councilmember Rapozo said, "Thank you Mr. Chair. I think for similar reasons, I will not be supporting the Bill. I think the unknown consequences that may occur; I think now we are finding out the unintended consequences of the last Property Tax Bill that we passed, that now people are getting their tax bills and it is substantial increases for many people that I have heard from. This is in addition to that, so I am really, really concerned. I know it has been said many times that this is a 'revenue-neutral Bill,' but one hundred twenty-seven (127) people will have at least a two thousand dollar (\$2,000) a year increase. Some unlucky soul is going to get a tax bill increase of thirteen thousand five hundred seventy-five dollars (\$13,575). I do not know who that lucky person is, but you can imagine that person when they pick up the tax bill. For someone in the homestead class, which means someone who lives in the home and owns, is going to get a tax bill increase of twelve thousand seven hundred fifty-three dollars (\$12,753). This is not revenue-neutral to them." I do not know where these figures came from, but I believe it probably came from the tax office. If Councilmember Rapozo had it, I have to assume that you also had the same information. Let me continue on to the next slide, please. Let me read this: "Do I feel rushed? Absolutely. I think someone brought it up. We had the public hearing and the first Committee Meeting on the same day. That rarely happens. That is being rushed. This definitely warrants more time to take a look at other options because I think we need to provide some stability for people. The economy is so bad that the people are struggling. Five hundred dollars (\$500) or one thousand dollars (\$1,000)— God forbid. Thirteen thousand dollar (\$13,000) increases in property taxes could well put someone out of their home. That is my concern. I think Ross called it best that 'he is scared' and so I am because I would hate to be the one who

approved the Bill that gets someone kicked out of their home. I will not be supporting the Bill, but I do stand committed to work with the Finance Department in a more of a roundtable format to look at some ways that we could get to a same result in some gradual way.” Rushed again and still going ahead with it, with all the information that you had. I do know that you had all the information as an example like “five thousand (5,000) people will pay more taxes” and “five thousand (5,000) people will pay less.” So you had the information presented to you. You knew what was going to happen. You were aware and told of that. There is no question in my mind. The information that was provided to you, and then the end result— what is the end result? The end result is “Tax Shocker; Tax Relief Ahead; Taxing Times; and What The Heck Is Going On?”

Chair Furfaro:
the time that I have given you.

Mr. Asing, I have been very generous with

Mr. Asing:

I will finish up.

Chair Furfaro:

Please summarize.

Mr. Asing: Okay. I am here today, very concerned at what has happened, what is going to happen, what will happen, and what I think is going to be the end result. What you are doing today, you did already, and I suspect that you are going to continue this. In other words, it is going to all pass. You knew the problem. You did not heed and take some time to do it, but you passed it anyway. That is what you are doing today. I believe that you are heading in that same direction: no talking, no task force meeting or discussion, getting the experts in here, and going through the issues of the plusses and the minuses. All of these things need to be fully considered and I am afraid that you have made— in my opinion, I feel the actions that you have taken borders on gross negligence. Some of the measures that you have passed...

Chair Furfaro: Mr. Asing, I do not want to say anything more than this. I have been very generous with the time. You are painting a picture that is very targeted at this last Bill, but...

Mr. Asing:

I am not only targeting the last Bill.

Chair Furfaro:

Excuse me, Sir.

Mr. Asing:

Let me finish.

Chair Furfaro: I will not let you finish. Let me tell you that your comments are well-received, and that is the reason why we have five (5) new bills in front of us. What has been submitted to us by the Administration and what was implemented has been very much exposed to the weaknesses you are showing us. But right now, we are talking about trying to fix it.

Mr. Asing:
happen to differ and that is okay.

That is your opinion. That is not mine. We

Chair Furfaro: You and I always had an opportunity to mutually agree. We can differ on our opinions. I respect you for that, Mr. Asing.

Mr. Asing:

I respect you for that.

Chair Furfaro: JoAnn, do you have a comment?

Ms. Yukimura: Yes. Hi, Kaipo...

Mr. Asing: Council Chair, I will only entertain questions if I am afforded the time to rebut any response to the question that is coming from Councilmembers. This is going to be a two-way street and not a one-way street. What I am saying is that you do not just get to ask me the questions and you answer and do what you want to, while I do not get to reply. So for any Councilmembers that have any comments to the questions that I ask, I want to be able to respond too. It has to be a two-way street. I will entertain any questions from any Councilmember provided that I have the opportunity to make comments on the comments that you make after you answer the question that you ask me.

Ms. Yukimura: Do not worry. I will not be making comments.

Chair Furfaro: Let me answer that, JoAnn. Mr. Asing, I think there are many of us here that certainly admire your service to the County and we try to handle ourselves to the best of our ability, but we want to stay focused on the question and you are entitled to be able to respond if a question is posed to you. That is not a problem. Go ahead, JoAnn.

Ms. Yukimura: Thank you. Hi, Kaipo. My only question is, in this case, did your property taxes go up?

Mr. Asing: No.

Ms. Yukimura: Okay. Thank you.

Chair Furfaro: Mr. Asing, I have dusted out, as we go through this, the two (2) workshops that you reference in 2004 and 2008. There were some red flags in there that you pointed out here as well. I am sure going forward that we are going to be revisiting those. Thank you for pointing them out again. Mel, you have the floor.

Mr. Rapozo: Thank you for being here today, Mr. Asing. I apologize because I did not even see you walk in. I think you surfaced your comments by your accomplishments on this Council. First of all, I thank you. I think it is important...

Mr. Asing: Councilmember Rapozo, I am not talking about my accomplishments, I am talking about just my service record.

Mr. Rapozo: Right...

Mr. Asing: From the time that I have served, not what I have done. That has nothing to do with it.

Mr. Rapozo: We look at it differently. You look at it as service and I look at it as accomplishments. I think it is important that the public knows that you have seen it all, probably more than any one of us on this Council.

Mr. Asing: I have not seen it all, but I have seen a lot.

Mr. Rapozo: You put my comments up there. I did not know this was coming today.

Mr. Asing: Nobody knew.

Mr. Rapozo: Yes, I know. I think a lot of my concern that was stated at that meeting, in the minutes that you shared, comes from working for so many years with you. I learned from you that we have to take our time, be careful, and consider the consequences. You always professed that. I do consider you an expert in this arena; the local legislature. At the point we are at today, what would be your recommendation?

Mr. Asing: I have to be honest with you. I do not have a recommendation. I do not know whether it is good or bad now because I do not have enough information. I need information. Information is the key. Getting experts, getting others, and getting opinions are important. You need all of that. I do not have that.

Mr. Rapozo: Neither do we.

Mr. Asing: I am not privy to that. I can tell you that the task force that you folks discussed with Mike Dyer—I am very familiar with that task force. As a matter of fact, I made a presentation to you saying that I do not agree with it and I gave you all of the reasons why I did not agree with it. It is all documented. It is in the record of why I disagreed with that. There were too many problems and that is the kind of problems you folks have now.

Mr. Rapozo: Mr. Asing, would you agree that a timeout is necessary and that an opportunity for us to get those experts and those qualified people; not Councilmembers that think they know, including myself, but real experts in the tax like getting the National Association of Counties (NACo) or some of those national organizations that do that. They study the tax structures throughout the Country and what would fit. Is that something you could support? We did not have the information.

Mr. Asing: Let us put it this way. If you did not do that, you were wrong already. You mean you did not do that? That is crazy. That is what you need in order to pass a Bill, especially a bill of this nature... major in nature. I do not know whether I am for it or against it. I just do not have enough information. Information is the key. Without all of the information to make a decision, I do not know.

Mr. Rapozo: Thank you.

Chair Furfaro: Mr. Asing, before I go to the next person, I made you copies of the 2004 and 2008 Tax Task Force. That is what we are revisiting. Your comments are somehow recorded in there as well on the items that you did not agree with. I will be passing that out to everybody as we get into talking about this today. Mr. Bynum, do you have a question for Mr. Asing?

Mr. Bynum: Yes. You showed us minutes from August 28, 2013. Did you read the minutes and the statements made by other Councilmembers that day?

Mr. Asing: I read all of it.

Mr. Bynum: Thank you.

Mr. Asing: Like I said, I needed information, so I read your Committee Reports and I know what every one of you said because I have that document. Those documents I have because I have researched it first before coming here. That is why I used what I used because I feel that is the most important thing that you all need to know and the entire public needs to know. I think these two (2) gentlemen were on the right track. Take your time. Slow down.

Chair Furfaro: Mr. Asing, I do want you know that what you have shared with us is somewhat reflective in where I think we are going. I think I read some comments in The Garden Island yesterday where I indicated that maybe the addition of a cap again for only a fixed time while a new Tax Task Force helps us evaluate. I think that was my message yesterday. I think that has always been my message. If you recall, I was the original introducer of the cap and we had a task force, and we got a lot of mixed reviews. You were correct. Some of them were not worth visiting. In 2008, we did that again. I have read a lot of your notes and your time coming here today is much appreciated. We will be considering all of that as we go forward.

Mr. Asing: Council Chair Furfaro, let me just respond by saying this: I was there and I know when you initiated the first one. What I think you and Councilmember Kaneshiro did not fully understand was that prior to that, we did have a cap similar to that, but that cap was associated with homeowners for a ten (10) year period. What you need to fully understand is why and what was the reason that was done? There has to be a reason you do that. What we were trying to do was stop people from buying and selling, and raising the values; therefore, people were not able to buy because the people that were buying were not buying to live in the house; they were buying to speculate. That was the reason we did that on the two percent (2%), but for a ten (10) year period only. That was dropped after a while.

Chair Furfaro: I agree with you.

Mr. Asing: Thank you.

Chair Furfaro: Thank you for your time. I want to take some action on this Bill because I have to leave. Again, both of these pieces that I shared with Kaipo from those years are available for the Councilmembers. One of the things we also hoped was the fact that there would be some long-term correction in our tax policy. That is why the two percent (2%) was not on a ten (10) year cap. We hoped we would have had a new policy by then. As we stand right now, we have only read one (1) Bill. When we come back from lunch, we would like to go into the others if we can.

There being no objections, the meeting was called back to order, and proceeded as follows:

Ms. Fountain-Tanigawa: Chair, we need a roll call.

Chair Furfaro: Yes, but hold on for a moment. There is a question from Mr. Bynum.

Mr. Bynum: We are back to order, so we can have discussion, right?

Chair Furfaro: Yes.

Mr. Bynum: I intend to vote on first reading for all of the Bills today to bring them to public hearing, so we can have a robust discussion. I want to respond to the idea that this decision was rushed. As we heard said today, there was a Citizens Task Force in 2004 that worked for almost one (1) year and brought recommendations to the Council, none of which were adopted. Then there was the 'Ohana Amendment that was overturned by the Courts. Then there was a proposal in 2008 that Mayor Baptiste brought here for comprehensive reform, but none of those provisions were adopted. Then I had a bill to recess the cap, and that was not acted on. Then the Administration brought here, reformed in two (2) bills that we worked on for months. This idea of having a tax task force has happened over and over again, and this Council's public record has never adopted the proposals that came from citizens or the Administration. The idea that this decision was rushed, and when you just cherry-pick some Councilmembers' discussion out of an agenda item and not show other Councilmembers, it can give you a skewed perception of what occurred. Those public records are available. I read them and other Councilmembers made statements that day as well that may paint a different picture. We have to look. The rhetoric about this tax stuff is really confusing to the public, so we need to be as informative and clear as we can about these proposals. I think Mr. Hunt has done that in spades over the last few years. I have not always agreed with the Mayor's proposals, but he has been clear and articulate. Where I do agree with Mr. Asing completely is that we went in to all of these decisions with our eyes wide open. We were told what the impacts were and Councilmembers chose to allow those impacts to go forward at some extent. We are where we are today. There are serious proposals before us today that can focus on immediate relief for those folks who deserve it. I do not want to make a whole bunch of comments on every Bill today because I intend to pass each one out to take it through the public process. Thank you.

(Chair Furfaro is noted as excused at 12:38 p.m.)

Mr. Chock: For the record, Council Chair Furfaro had to step out for a minute. My hope is that we can get through this Bill, and then take a lunch recess. I will also be following soon in terms of moving these bills through to consider all of them in their entirety. I do have one (1) amendment that I will ask Councilmember Rapozo to introduce for this specific Bill. I know Councilmember Kagawa had the floor next, so if we can move through this discussion and get to this amendment.

Mr. Kagawa: I will try to keep it really quick. I think my statement up there speaks for itself that I felt rushed. I read the minutes as well. Councilmember Hooser also stated that he was rushed, along with Councilmember Rapozo. We said it because we were rushed. Property tax reform is not a minor problem; it is a major issue. You do not rush on major issues. We did that and look at the result. The proof is in the pudding. It has been quite a disaster to try and

work out one-by-one— the Real Property Tax Division are doing a remarkable job, trying to help these people one-on-one to get educated on what kind of options they have. The tax system should not be working after the bill deadline is done. It is too late. Even one (1) week or two (2) weeks before the August 20th date was done, it is too late. That is why you need to put the cap back and take our time with something that is major. You fix major problems by taking your time and putting in a lot of dialogue with the public. Apparently, the public did not know; our taxpayers; the people we serve. The first story, Ms. Lopez and her family— if that did not move you, I do not know what will. She is talking about how her family is considering selling... she does not know what her family is going to do now with that big bill that they got taxed on. Again, this is another issue and the Real Property Tax office can probably help her a little bit. This should have all been done before hand and that is why the word “rushed” fits this issue to a “t.” We were rushed when we should not have rushed. Thank you.

Mr. Chock: Thank you. I am happy to say that we are able to give some relief to Mrs. Lopez as well and some options. I will go to Councilmember Hooser next.

Mr. Hooser: I am going to be supporting all of these measures as they move forward. I think they all deserve discussion. I think we need to take a long look at this and not just try to “knee-jerk” react to every single thing. I also think that this serves no useful purpose for us to bicker, blame, or prowl comments out of past discussions and blame each other, the Mayor, or anybody. This is not the time for blame. This is the time for working together. I am hopeful that we will be doing that. We have five (5) proposals or more. There is a whole bunch of them, but I think it shows the responsiveness and the acknowledgement of this Council that we do need to make those changes. I am hopeful that we will move forward in a positive manner and work to what is in the best interest of the community. It is more than just a tax cap, quite frankly. That removal of the cap was one element. There are other elements that are addressed in other bills. The use provision is one particularly that we are going to be talking about that I am very concerned with. There are a lot of moving parts and I think it just behooves us to not try to say that we have a “silver bullet” in one (1) Bill to fix everything because that is certainly not the case. I have a process question for the Chair. Are we going to be entertaining amendments now or after the public hearing? There are some other bills that may need amending also. I am done with my remarks.

Mr. Chock: Okay. This is a housekeeping amendment, so I do not think it is going to have a huge impact. We will introduce it after this point because I think we are going to have further amendments that are more substantial. Do you have further discussion?

Ms. Yukimura: As Councilmember Bynum has pointed out, there has been a lot of effort at Real Property Tax reform and many long meetings with experts around the table. This issue is not an easy one and it requires some complexity in order that we can protect people like Mr. Haraguchi, who has been here for a long time; people who are renting their units at affordable rates; and people with low incomes; while at the same time, staying on course with the main purpose of property taxes, which is to provide for government services of this island. We, who voted for the budget and the tax rates in this last budget session— we remembered what happened when the federal government did not pay attention to an operating budget and how all of the services were cut and people then suffered.

It is easy to say that is a minor thing until it actually happens. Some of us took responsibility to pass a balanced budget. We also took responsibility to try to offset the impacts of removing a cap that causes very unfair divergence of property values. We have put many programs into place to address that and we have been watching how those programs have addressed people like Mr. Haraguchi, Ms. Lopez, and others. What we have actually may be the best working system with some additional tweaks and adjustments as we learned now where the gaps are. We actually may have a hybrid system and we have to be careful not to "throw the baby out with the bathwater," but to pay attention and address the places where this law is not working. I am grateful to everyone who has introduced bills to address some of those issues and this Bill right before us now from the Administration, if I understand it correctly, is to exempt the first five hundred dollars (\$500)... say you have to pay the first five hundred dollars (\$500) of your increase... waive the rest except for thirty percent (30%) and to waive penalties and fees, so that people who can pay the bills but need some time to prepare for it, can prepare for it, and also for us to address during this year the problems that might be coming forth. I want to acknowledge that our biggest mistake has been not to inform people and to help people with these issues. We are trying to remedy that and I am grateful to everyone who has come forward to tell us how they are being impacted because it is not always possible to anticipate everything. I want to request that people take a look at the full structure with all of these different programs designed to protect and give incentives to things that benefit our community, so that we can really see where the problems are and take care of that, but not destroy what I think may be moving towards a workable system.

Mr. Chock:

Councilmember Rapozo.

Mr. Rapozo: I will be introducing the amendment that was requested. Basically, it is a typo that needs to be fixed. It is not substantive at all, so I will be doing that at the request of Mr. Chock. I think just the structure of our tax system is flawed; the structure itself. As you start tweaking one point, you are throwing another point off balance. We can do that all day long, so that is why I think it is dangerous when we start trying to do these "Band-Aid fixes" because it is not going to fix the structure. The structure is flawed. The fact that I felt rushed; that was my feeling. "I feel rushed," that means I felt rushed. I did not say "the Council felt rushed." I said "Mel Rapozo felt rushed" because I did and this whole series of bills that we are seeing today is the same thing. I am feeling rushed and I know as the pressure is put on because of the budgetary needs of the County, we are going to feel like we have to pass these things because we do not want to lose the revenue. I think that is what is pushing the actions, which is the need to balance the budget, and I agree. I think Councilmember Yukimura made some comment about some of us that voted for a balanced budget. I forget the term she used, but at the end of the day, we each have our own point of view and our own opportunity to vote, whether we agree or disagree. I think no one can argue that, as I said earlier, the structure is flawed. If we keep doing incremental or proportionate increases, it is still going to be flawed. It does not matter because you started off with a flawed structure. How would we fix it? We are not going to fix it by saying, "Mr. Haraguchi, we are going to work on your case and implement something." Once you do that, then you put somebody else out of balance. Then we are going to run to them? We are doing this after the bill has already passed—that is insane. Now we are looking at how can we... there are five (5) Tax Bills on the same agenda. That is unheard of as opposed to taking the timeout like I am saying. I am only going to speak on one (1) Bill today, Mr. Chair. I am not going to talk on every single one. I am hoping we all do that same by just saying our comments up front

and get through this thing, so we can move on. You have to take a timeout and bring in some experts, as Mr. Asing said. Experts— as much as I appreciate what Mayor Baptiste did and put together a Citizens Committee on tax relief, of course you staff or man the Committee with people from the community who have special interests, whether they are real estate, time share operators, vacation renters, and maybe you have an accountant. Where are the property tax experts? Experts that know the various types of property taxation throughout the Country— there were none of them. This body— he is a Certified Public Accountant (CPA), which I think is the closest, I think, to an expert in finance. Maybe even the Chair with his experience in managing mega, bazillion dollar resorts. Where is the real expertise here? I do not have it. I rely on the experts that come here and as you saw in my testimony, I make my comments known. I am afraid that some of those numbers are going to be really high, and that is coming from a non-expert. How hard is it to go out and issue out a contract to get some tax experts in here and give us some suggestions? That could not take more than one (1) year. The procurement period in and of itself will take months. Let us get some real experts and say, “In a community your size with your type of revenue, population, and demographics, these are the different proposals or recommendations that you might look at.” It might be a whole different way we do things, and then when we find a new way and gradually infuse it into the community over a three (3) year to five (5) year period; not just whack them one time with twenty-five thousand dollars (\$25,000) or thirty thousand dollars (\$30,000). I guess what I am saying is that we have to take a timeout, step back, get some expert input, and then move forward to reinstate the stability into the community and to the County as well. There will definitely be an impact to the budget. We did not concern too much of the guy who had to adjust his household budget to accommodate a thirty thousand dollar (\$30,000) hit in a year. Now it is the County’s time to take a look at the hit and say, “How are we going to address it?” Thank you.

Mr. Chock: Thank you. I am looking forward to some really good discussions. I have agreed in general with most of what has been said. My hope is that what we are looking at are actually some short-term fixes to address the biggest issues right now on the table and provide some relief. That is just to take care of what we need to now. My hope is that we look at something more midterm and something that will help transition. I agree that we should reconvene and look at these things a little more in detail and something long-term in terms of tax reform. The thing that keeps coming up when I have this discussion is that some of it is unpredictable. With that, we have to make adjustments along the way. We made one big adjustment and that has hurt us, so now we have to make some small adjustments. I just want to make sure that, like Councilmember Yukimura said, “Do not throw the baby out with the bathwater.” Let us just be objective here, take a step back, fix what we can now, and look at this a lot more in detail. Those are my comments that I will be sharing today.

Mr. Rapozo moved to amend Proposed Draft Bill (No. 2554) as circulated, as shown in the Floor Amendment which is attached hereto as Attachment 1, seconded by Mr. Kagawa, and carried by a vote of 6:0:1 (*Chair Furfaro was excused*).

Mr. Chock: Thank you. Are there any questions or discussion on this amendment? If not, we can move on.

The motion for passage of Proposed Draft Bill (No. 2554), as amended, on first reading, that it be ordered to print, that a public hearing thereon be

scheduled for September 24, 2014, and that it thereafter be referred to the Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee was then put, and carried by the following vote:

FOR PASSAGE:	Bynum, Chock, Hooser, Kagawa, Rapoza, Yukimura	TOTAL – 6,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Furfaro	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Mr. Chock: The motion passes. We will go to lunch recess and come back at 2:00 p.m. for the public hearing. Thank you.

There being no objections, the meeting recessed at 12:54 p.m.

The meeting reconvened at 2:06 p.m., and proceeded as follows:

(Chair Furfaro is noted as present at 2:06 p.m.)

Chair Furfaro: We are back from our recess. I believe we were continuing with Tax Bills, Scott.

Mr. Sato: Correct. We are on Proposed Draft Bill (No. 2555).

There being no objections, Proposed Draft Bill (No. 2555) was taken out of the order.

Proposed Draft Bill (No. 2555) – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2014-781, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2014 THROUGH JUNE 30, 2015, BY REVISING THE AMOUNTS ESTIMATED IN THE GENERAL FUND (*Real Property Tax Relief Funding – \$750,000*): Mr. Kagawa moved for passage of Proposed Draft Bill (No. 2555) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for September 24, 2014, and that it thereafter be referred to the Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee, seconded by Ms. Yukimura.

Chair Furfaro: Before we go any further, is there any public discussion on this particular item? Is there discussion from members?

Ms. Yukimura: Chair, I just have a question for the introducers of this Bill, which proposes the restore the cap as I understand it.

Chair Furfaro: I believe you are talking about a different Bill. That one will be coming up shortly.

Ms. Yukimura: I am sorry. I do not have any questions and I apologize.

Chair Furfaro: We are on the Administration's Proposed Draft Bill.

Ms. Yukimura: Okay. I do have a comment. Maybe it is best if I call Mr. Hunt up with your permission.

Chair Furfaro: Okay. Steve, may I ask you to come up? The rules are suspended. Councilmember Yukimura has a question for you.

There being no objections, the rules were suspended.

Ms. Yukimura: Steve, in the prior Bill that we considered, this is the Administration's proposal to give interim relief to people who have gotten increases above five hundred dollars (\$500).

STEVEN A. HUNT, Director of Finance: The Bill that they are reading now actually is a budget item for CIP, moving funding from one of the bond funds to another bond fund. This is Proposed Draft Bill No. 2553, correct?

Ms. Yukimura: No, we are on Proposed Draft Bill No. 2555.

Mr. Hunt: Okay.

Ms. Yukimura: That is the problem with having a lot of money bills.

Chair Furfaro: We have a number of bills in front of us.

Ms. Yukimura: On first reading, we just passed Proposed Draft Bill (No. 2554), which is the Administration's proposal to give interim relief to property owners that have received more than a five hundred dollar (\$500) increase in their taxes from last year to this year, right?

Mr. Hunt: Correct.

Ms. Yukimura: This Money Bill that is before us now for action is to take seven hundred fifty thousand dollars (\$750,000) from the Reserve Fund to put it as a "minus" in our Real Property Tax revenues... we are taking away from both sides. But to cover the relief that we will be giving. Is that correct?

Mr. Hunt: That is correct. We recognize about a seven hundred fifty thousand dollar (\$750,000) shortfall by this tax relief. In order to make the budget balanced, we need to move moneys from the Fund Balance back into the budget to make that whole.

Ms. Yukimura: Okay, so this is sort of a package. You have come with a tax relief proposal, but in order to give tax relief, we have to find money to give the money back. You are proposing that we take it from the Reserve.

Mr. Hunt: From the Unassigned Fund Balance, correct.

Ms. Yukimura: What is the rule of thumb that experts across the Country recommend we keep in reserve as a sound budgeting process?

Mr. Hunt: In Government Finance Officers Association (GFOA) Standards, it is typically two (2) months of operating revenues or expenditures.

Ms. Yukimura: How much would that be for Kaua'i County?

Mr. Hunt: I believe it is somewhere in the neighborhood of eighteen million dollars (\$18,000,000) to twenty million dollars (\$20,000,000).

Ms. Yukimura: Okay. What do we have in our reserves right now? So the eighteen million dollars (\$18,000,000) to twenty million dollars (\$20,000,000) is for the Unassigned Fund Balance?

Mr. Hunt: It could be, depending on how the funds are held. If you have a committed reserve, that could be counted towards your available Fund Balance, but the Unassigned Fund Balance portion is currently about four million nine hundred seventy thousand dollars (\$4,970,000) and the Committed Reserve Fund Balance is approximately three million six hundred eighty-seven thousand dollars (\$3,687,000).

Ms. Yukimura: So that is a total of about five million dollars (\$5,000,000).

Mr. Hunt: No...

Ms. Yukimura: Sorry, seven million dollars (\$7,000,000) or eight million dollars (\$8,000,000)... eight million five hundred thousand dollars (\$8,500,000).

Chair Furfaro: Excuse me, JoAnn. Steve, can you just break it down one more time for me.

Mr. Hunt: Sure. The Unassigned Fund Balance before the Money Bill is four million nine hundred seventy-one thousand eight hundred twenty-nine dollars (\$4,971,829) to be specific. The Committed Fund Balance is three million six hundred eighty-seven thousand seven hundred thirty-seven dollars (\$3,687,737), of which a portion of that relies on a return of some Federal Emergency Management Agency (FEMA) moneys, which are not there, so that is the budgeted fund balance; not the actual Fund Balance as of today.

Ms. Yukimura: So the total is about eight million six hundred thousand dollars (\$8,600,000) that you would have in the reserve, which includes both committed and uncommitted funds.

Mr. Hunt: Correct.

Ms. Yukimura: The committed funds are the ones that we would use in time of emergency like if Hurricane Iselle had really hit us and if we needed immediately cash, we would have some funding.

Mr. Hunt: Correct. There are provisos in the budget that specifies how much of those funds can be used for which appropriate action.

Ms. Yukimura: You said GFOA, which is what again?

Mr. Hunt: Government Finance Officers Association. As a general rule of thumb, they recommend about two (2) months' worth, but anywhere from fifteen percent (15%) to twenty percent (20%) of your operating budget as a reserve. It depends on the diversity of your revenue sources as well.

Ms. Yukimura: Which in our case, the amount is about eighteen million dollars (\$18,000,000) to twenty million dollars (\$20,000,000) that we should have in the reserve if we have a healthy budget.

Mr. Hunt: Yes.

Ms. Yukimura: Okay. We do not even have half of that, right?

Mr. Hunt: That is correct.

Ms. Yukimura: We are taking out seven hundred fifty thousand dollars (\$750,000) on top of that right now.

Mr. Hunt: Correct.

Ms. Yukimura: Was low reserve funds not one of the reasons that one of the bond rating companies downgraded our rating for bonds?

Mr. Hunt: Fitch Ratings Agency puts a higher priority on fund balance than other rating agencies, although as of yesterday and today, I have been contacted by Standard & Poor's asking similar questions about projected fund balances.

Ms. Yukimura: Okay. Thank you for the information.

Chair Furfaro: Members, I want to remind everybody that these Bills are up on first reading. I do not mind one (1) or two (2) questions as we go through them, but this is going to be for full public discussion and there are members of the public who have come to give testimony today, so let us be sensitive to the public's needs on that. Mr. Hooser, you have the floor.

Mr. Hooser: I have a brief question. I think in the line of discussion that Councilmember Yukimura brought up is a valid one. As we move forward with all of these measures, they all have budget implications: County budget implications and budgeted implications on the individuals in the community. What Councilmember Yukimura was asking about is what our existing Fund Balances are and what is recommended, but I would like to follow that up with what are the projected increased expenses? If you do not have that now, maybe we can address it in a future meeting. I have been told earlier that it was a number of nine million dollars (\$9,000,000) being kind of tossed around as a potential deficit we are already chasing to make up for that. I think if nine million dollars (\$9,000,000) is an accurate number, combined with the number that we are already short, is a number that we need to know. If you could maybe either talk about that now or at a future meeting in terms of what projected deficit we already have going forward.

Mr. Hunt: I am not prepared to talk in specifics, but it primarily relates to collective bargaining and loss of grant funding for several areas for our government.

Mr. Hooser: Okay. So in a future meeting, will you have more detail in that?

Mr. Hunt: Yes.

Mr. Hooser: Thank you.

Chair Furfaro: I am just going to piggyback on that first if I can. Steve, even though I pointed out earlier today that there are some people that are more talented than me that have served on the Council with numbers, I think I am pretty good with the numbers too. The numbers that Mr. Hooser is asking of you, and these are from previous meetings— we have about two million eight hundred thousand dollars (\$2,800,000) in their increases from Units 2, 3, and 4; we have committed union increases for Units 11, 12, and 13; we have the premiums for the police force at about six hundred fourteen thousand dollars (\$614,000); and we have the Housing piece at about eight hundred forty-one thousand dollars (\$841,000). I think Mr. Hooser is looking for a number of about nine million two hundred thousand dollars (\$9,200,000). Is that correct?

Mr. Hunt: That sounds about right.

Chair Furfaro: Okay. Could you follow-up with a memo on that? I think that is what you are looking for.

Mr. Hooser: I am, Chair, but I supposed that is going to be offset a little by some of the measures that we passed recently. But yes, that is what I am looking for. Thank you.

Chair Furfaro: Do you need a formal request from us?

Mr. Hunt: It would help because we are working on numbers that vary, depending on timing of vacancies, replacement, and that type of thing because there are cuts going on simultaneously as well.

Chair Furfaro: We will send one over to that effect. I just wanted to close that before I gave the floor to Mr. Bynum.

Mr. Bynum: I do not want to go too far down this route, but I do want to say to the public that we usually do not get into this level of detailed discussion at first reading because the whole point is to hear from the public, have time to digest, look at all of the proposals, and run numbers in this instance. I do not want to belabor this, but whatever proposals come, we have to follow the Charter and have a balanced budget. For the short-term relief that the Mayor is doing exactly what he should and is correct, he is saying, "Here is my proposal, here is the cost, and here is how I am going to pay for it." I think all of us need to do that with any proposal that we put forward that impacts this year's budget. Is that not a requirement under the Charter?

Mr. Hunt: It is a requirement to have a balanced budget, correct.

Mr. Bynum: I think that is a really important discussion to have and not go into a lot of depth today, but know that is out there. I do have one question that is probably a legal question that is germane at first reading related to this, which is you just agreed that whatever proposal we adopt, we have to pay for it. I am coming from the assumption that I want confirmed today, even if you cannot, that this Money Bill— let us say the Mayor's proposal gets amended, as I have told you that some of us intend to do... maybe like the structure of how we provide relief— I think it should be more or less, then this Money Bill will be amended as well. Is that correct?

Mr. Hunt: I think that because it is before you as a package and you are amending one, you would have to amend the other to make sure you are in balance.

Mr. Bynum: Right. My question is there are other proposals here, and maybe this is for a County Attorney, but say if Councilmember Rapozo and Councilmember Kagawa's proposal— that also has a cost and that would need a money bill. I want to just make sure that this Money Bill can serve as a vehicle for other proposals as well. I want to get that answer today, Chair, in case there is a legal problem that will end up in the long run with the Council adopting the proposal and not having the companion Money Bill.

Mr. Hunt: I think I would defer legally as well to make sure that the language in the Money Bill is not so restrictive as to just tax credits that it could be brought into if you are discussing Permanent Home Use or other types of relief that would come in, whether that same Money Bill could be used to fund that or whatever the end result would be.

Mr. Bynum: It is on record that Councilmember Hooser and I have a proposal. We are responsible to give a reasonable cost to that and provide for it. If the attorneys are listening, if they can give an answer now and say, "Yes, this Bill can be amended to facilitate whatever proposals the Council ends up deciding on." Is there a County Attorney present that can answer that?

Chair Furfaro: Mr. Castillo, can you come up and join the Finance Director, please?

Mr. Bynum: In fairness, he may not have been listening to the previous dialogue, so I am prepared to repeat the question.

Chair Furfaro: We are going to ask you to introduce yourself, and then we are going to pose a question to you that I do not want to take a recess to wait for a response and so forth, but there are some members who are anxious to hear the response today, so let me have Mr. Bynum take the floor and pose his question to you. We are looking for a response today. Go ahead, Mr. Bynum.

Mr. Bynum: Were you listening previously or distracted?

ALFRED B. CASTILLO, JR., County Attorney: No, I was doing other research at the time. Al Castillo, County Attorney.

Mr. Bynum: Mr. Castillo, we have several tax proposals before us. Right now, we are discussing the Money Bill that is brought by the Administration to pay for their proposal. I suggest that their proposal may be amended, and then the Money Bill would need to be amended to make it consistent, right? There are other proposals here before us that have costs as well. I want to make sure this Bill can work as the vehicle to account for those costs should we adopt say Councilmember Kagawa and Councilmember Rapozo's proposal. We will need some way to account for those costs. Can this same Bill be used for these others or do we have a legal problem?

Mr. Castillo: I am sorry. What do you mean by this same Bill?

Mr. Bynum: The Bill that we are currently discussing is a Money Bill for seven hundred fifty thousand dollars (\$750,000) that would, if the Mayor's relief proposal is successful, would fund it. The first part of the question is— that Bill may be amended by Councilmembers. I think Councilmember Hooser and I intend to put forward an amendment that would be greater relief; therefore, it would require greater payment. I assume this Money Bill could be amended to companion this Bill should it be amended. That is question number one.

Mr. Castillo: I am pausing because this is almost exactly the same conversation that we had with our Finance Director this morning regarding what the Council is doing regarding the Tax Bills before this Council because we do need to— my concern this morning was that what we are doing... I do not know if I am answering your question, but my concern this morning was what we are doing is almost like a mini budget proceeding. Let me talk to the Finance Director. Okay, so the answer to that question is "yes" because you would be making the adjustments accordingly.

Mr. Bynum: The second part of the question is say Councilmember Kagawa and Rapozo's Bill passes or me and Councilmember Hooser's Bill passes; they also need to do funding.

Mr. Castillo: Yes.

Mr. Bynum: So can we use this same Bill as a vehicle for any of these proposals? In the end, the Council says, "Okay, here is our plan. Can we use this Bill to finance it, even if those costs are tax credits, something else, or personnel?"

Mr. Castillo: My answer to that is "yes."

Mr. Bynum: Okay. I just did not want us to say, "Okay, we have adopted this and we have identified the cost." I want to make sure we have a vehicle for that. As long as this Bill can be that vehicle, we are good. Thank you.

Chair Furfaro: I have heard your answer from both of you, but I am telling you that as a senior manager in the resort business, I had a real tough time with that answer. We are forecasting revenue here based on the fact that you may extend people's deadline to appeal. How do you know who is going to appeal?

Mr. Hunt: I think that is going to be part of the package job. You are going to have to estimate what that potential relief measure is, quantify that, and put that in as a money bill. I am in the same boat that you are. I cannot predict who was going to come in and apply, what the amount of the relief is, and what programs would be available to, much less if something passes concurrently that maybe is a tax credit and a retroactive use and exemption. Maybe the credits themselves wipe out the benefits you would have gotten from the application. I could not tell you what that would be until they actually come in.

Chair Furfaro:

Thank you for making my point.

Mr. Castillo: Chair, may I make a comment please? The question posed to me was really a "yes" or "no," but how it is done at the end of the day is exactly what you have pointed out and that is my concern as of this morning as I discussed the matter with our Finance Director. Thank you.

Chair Furfaro: I am going to give the floor to Mr. Bynum since it was his question. I am just saying that is a hard variable to forecast. Go ahead, Tim.

Mr. Bynum: I thought this was an important question because we do not want to come three (3) weeks down the road and say, "You do not have the money bill to do this." It is an important answer. Of course I understand those variables because I have been in ongoing dialogue with the Finance Director of what those costs might be and when we get to present our whole package. We will give a rationale. My thing today is mostly technical to make sure that we have a vehicle to accomplish that when we get there. Thank you.

Chair Furfaro:
Mr. Rapozo.

Okay. Al, you have another question from

Mr. Rapozo: Mine will not be as tough because I think your question was, "is it okay," but...

Mr. Castillo: You can ask me the hard questions and if I do not know the answer, I have an army of Deputy County Attorneys who have my back.

Mr. Rapozo: We have five (5) bills floating, one (1) that is a Money Bill that addresses a specific amount of seven hundred fifty thousand dollars (\$750,000) that is going to go in this line item that says, "Real Property Tax Relief." I guess where I am troubled is would it not make more sense if we figured out the direction that we are heading first, right? This Council is going to determine what bills are going to pass, what the impact will be, and then introduce the money bill. Would that not make more sense? Again, it is more of a policy question. Maybe it is not a legal question.

Mr. Hunt: I think it is a timing question because depending on when you want that relief to actually be effectuated, I think in many of these, they talk end of year December 31st to make that happen. There may be a rebilling cycle. We are going to have to find moneys, maybe part of the money bill as well, to send out new notices and what those new bills would be, give them time to make their first payment without waiving the back penalty interest beginning August 20th. I think if we deliberate too long on what the solution is and not have

the money bill running concurrently, then we have to wait another two (2) months to actually give that relief and we maybe not butting up against the second billing cycle. I think part of it was a timing issue. We realize this could be amended and the amounts can be amended and it could even be deferred if decisions have not been made on the main solution, but you have to have kind of both...

Mr. Rapozo: This is where I think the legal question comes in because today it is at seven hundred fifty thousand dollars (\$750,000). At what point does it require a new set of bills when the change is so substantial? Let us say that all of a sudden, the funding requirement is much higher. At what point does it become a substantially changed bill that would require a whole new process? That is my concern. If you are just looking for the movement of funds to facilitate informing the public and something like that, that I can see. But if the intent of this Bill is to be a partner bill or companion bill to Bill No. 2554— I think Mr. Bynum's question is relevant. "Can that be used for other measures?" My concern is that at the end of the day, it might be a collective decision of this Council that may require a one million dollar (\$1,000,000) or one million two hundred thousand dollar (\$1,200,000) transfer. Is that legal? Can the Council approve an amendment of that nature without going through the public hearing? Today, all the public knows is seven hundred fifty thousand dollars (\$750,000). I do not think it is too cool if couple months down the line we kind of make it one million two hundred thousand dollars (\$1,200,000) and I am just speaking totally hypothetically, and not giving the public that opportunity to come at a public hearing. That is the legal side of it. I obviously do not expect an answer today. That is my concern. I am sure that within your office, we could probably find the funds to do a mail out today. Without a money bill to transfer from the reserve— but if it is to basically pay for the lost revenue, I think we have to be a little careful and figure out where exactly are we looking at and what the ballpark figure is. I am afraid that if we change the amount too much, it is going to trigger some issues with the Sunshine Law.

Mr. Hunt: It certainly would trigger an issue if it exceeds four million nine hundred seventy-one thousand dollars (\$4,971,000), which is our available funding.

Mr. Castillo: Councilmember Rapozo, I have somewhat of an answer also for your question and position on what is happening now. What we look at in the County Attorney's Office is whether or not what we are doing is legal and how it is legal. In the financial sense, it would be nice to know in terms of where we are heading and the reasons why. What is happening now is very complex and it would be very difficult for the public to understand.

Mr. Rapozo: Thank you.

Chair Furfaro: Al, before you go and before I give Mr. Bynum the floor, this particular piece says that this Bill is available for relief funding. That is how I read it. It does not say it is specifically only for this Bill or that Bill. Basically, this is like running a credit to say that "we are going to take some money from your savings account." Other tax relief could be done when, and you mentioned it Steve, we are still owed money from FEMA. That is not in our financial forecast. I do not know what that amount is, but that is not accounted for in the budget at this point. We have possibly some found revenue with the interval to ownership and time share. Those are new revenues, which are not in the budget. But the verbiage here is seven hundred fifty thousand dollars (\$750,000) set aside

for relief funding. It is not earmarked for a specific program. That is all I wanted to say.

Mr. Bynum: I think that this is really important. I have been on this Council for a long time and I have seen a lot of work that get derailed late in the game because we did not ask these kinds of questions up front. We heard last week in testimony that to reinstate the cap is three million one hundred thousand dollars (\$3,100,000). That does not address people who moved into different tax categories, so this may get amended to four million dollars (\$4,000,000) or three million five hundred thousand dollars (\$3,500,000). I do not know. I think Councilmember Rapozo's question is really important because if this cannot be the vehicle—because I ask our Staff, “Do I need to do a companion money bill?” The idea was that, “No, we have this money bill that can serve.” I just think that it is really important for us to know that.

Chair Furfaro:

Mr. Kagawa.

Mr. Kagawa: Thank you. I do not know where we are getting three million one hundred thousand dollars (\$3,100,000). Back when you asked us to remove the cap, and I and Councilmember Rapozo did not approve it, what did you say was the net tax difference? If we stayed with the cap on compared to the taking off the cap, what was the difference that you stated about?

Mr. Hunt: Based on 2013 figures, we were anticipating about four hundred ninety-six thousand dollars (\$496,000).

Mr. Kagawa: When the Council actually increased rates to the residential class, Transient Vacation Rental (TVR), and all kinds of classes...

Mr. Hunt:

(Inaudible).

Mr. Kagawa: So that figure, as we sent out our August 20th bills, moved up to...

Mr. Hunt: About seven hundred forty thousand dollars (\$740,000) more than anticipated.

Mr. Kagawa: If we go back to putting the cap, all you do is subtract the one million two hundred thirty-six thousand dollars (\$1,236,000) back and that is a change, so I do not know why we are talking about three million dollars (\$3,000,000). We are talking about two million dollars (\$2,000,000) in some other theory that is not related to...

Mr. Hunt: With all due respect, Councilmember Kagawa, it actually is because we gave relief. When we enacted the higher exemption amounts, there was about one million eight hundred thousand dollars (\$1,800,000) in relief that went out and there were about three million one hundred thousand dollars (\$3,100,000) in increases. The net effect is one million two hundred thousand dollars (\$1,200,000), but if we reinstate the cap, the market taxes currently are based on the new exemption amounts. If we are talking about rolling back the taxes to where they were, then we would be taking back that one million eight hundred thousand dollars (\$1,800,000) in relief that we had awarded.

Mr. Kagawa: I think we are misinterpreting each other on our proposal. Our proposal just says, "Let us go back to last year's method of taxing. Forget the removal of the cap. Let us go back to the way we taxed from last year and the ten (10) years before that with the cap on, not including the new exemption formulas and what have you that we adopted." We are saying that I think if you support the removal of the cap, you are agreeing with us that this whole cap removal was a bad idea at this point. I think that is where we are coming from. We are saying that we just want to go back to where we are not making that one million two hundred thousand dollars (\$1,200,000) with the cap removal. We are just saying, "Let us go back to where we were last year."

Mr. Hunt: Just by interpreting that, that would mean the one million eight hundred thousand dollars (\$1,800,000) in relief that was given just by market taxes would have to be taken away. If you have a one thousand dollar (\$1,000) bill and you went down to eight hundred dollars (\$800) because you had higher exemptions this year, you would go back to one thousand dollars (\$1,000). We would rebill those who got the relief, that increase, to go back to where they were in 2013.

Mr. Kagawa: Yes. I am just saying that we are going back to last year and the previous ten (10) years method of taxing until we find a better solution. That is all I am saying. Thank you.

Chair Furfaro: Mr. Hooser, and then Mr. Bynum.

Mr. Hooser: With the changes that were recently made, half of the taxpayers have lower tax bills in the homestead classification.

Mr. Hunt: Yes, fifty-one point five percent (51.5%).

Mr. Hooser: Okay. If we go back to where we were, we would take that savings away from all those people.

Mr. Hunt: Correct.

Mr. Hooser: I, for one, cannot do that. I will say that for the record. That is what the difference is that you are talking about in the budget.

Mr. Hunt: Correct. If you were to take that one million two hundred forty thousand dollars (\$1,240,000) or whatever that number is that was the increase, and you were to add the one million eight hundred thousand dollars (\$1,800,000) that was in the decrease together, that is the three million one hundred thousand dollars (\$3,100,000); but in order to only make it a one million two hundred forty thousand dollar (\$1,240,000), you would have to basically increase the one million eight hundred thousand dollars (\$1,800,000) of all those that got relief.

Mr. Hooser: Right. I just wanted to make that clear. If we go back, we also have to charge people more.

Mr. Hunt: Right. It essentially negates the market taxes now because your actual taxes would be higher than the market because of the added exemptions that would be in.

Mr. Hooser: Right. I think it is a good example of what we talked about earlier. There are a lot of moving pieces here and we need to be diligent in making changes going forward. Thank you.

Chair Furfaro: You can express that in some kind of a written form as you are talking about the modern math here; negative and positive integers. That is what adds up to the three million one hundred thousand dollars (\$3,100,000).

Mr. Hunt: Yes.

Chair Furfaro: JoAnn, I am going to go Tim, and then to you.

Mr. Bynum: Steve, have you read the Bill? Last week when we got the Bill, I read the Bill and it does not have anything about rebilling those people in it, right?

Mr. Hunt: It talked about going back to the 2013, but part of the PHU credits deals with the lower of market or PHUs, so unless that is changed and the removal of lower market comes out, then we would have to go back to the PHU.

Mr. Bynum: So the Bill as submitted cost is three million one hundred thousand dollars (\$3,100,000)?

Mr. Hunt: That is my interpretation of how it is written.

Mr. Bynum: That was my interpretation as well. We went over this a number of times about the five thousand (5,000) who got tax increases of how big they were, so some of those folks maybe had two thousand dollar (\$2,000) decreases in their taxes. In order to do this, we would have to send them a bill and say "never mind."

Mr. Hunt: A really obscure one is actually one that went from an oceanfront Hanalei vacation rental into homestead this year; thirty thousand dollars (\$30,000) in relief this year by just changing the class. If we were to roll back and say "you pay what you paid last year," they are no longer doing vacation rental, but their taxes last year was thirty thousand dollars (\$30,000) higher under the cap.

Mr. Bynum: I have been talking about these two (2) groups for about five (5) years now. This group, taxes came down. They are not here in the audience. A few of them have written and said, "Thank you. Why was I paying such a huge amount?" We have to be clear about the costs and account for them. We also need to make sure that we have a vehicle to do that. Thank you.

Chair Furfaro: Before we go any further, I want to remind everybody that this is first reading, and then there is a public hearing. Next, it will go into Committee where I expect the amendments to be done; not here today. Let us not try and turn this into a Committee Meeting. Let us move forward to get the Bills on the agenda, so that we have some timely activities and prepare your detailed questions when it gets into Committee. JoAnn, you have the floor next.

Ms. Yukimura: Thank you, Chair. My question was the same question as Councilmember Bynum, which is to understand the fiscal implications of Bill No. 2556, which is the Bill that would restore the cap. I understand the Chair's point about not making this into a Committee Meeting; however to me, knowing the fiscal implications would be helpful to people who are going to be making testimony at the public hearing, so that they know what the implications are of the Bill. They are either supporting or asking us not to pass. Thank you.

Chair Furfaro: Vice Chair, do you have a question?

Mr. Chock: Just in regards to Bill No. 2556...

Chair Furfaro: We are not on Bill No. 2556 yet, if you can hold.

Mr. Chock: Okay. Thank you.

Chair Furfaro: Steve, you are getting a flavor of what probably will be in Committee. I am going to ask you one of my questions. I am really struggling with the comment made that— what percentage of our total revenue does homestead makeup?

Mr. Hunt: Homestead is just a little under ten percent (10%) of our total revenue with about twenty-nine percent (29%) of our value.

Chair Furfaro: Okay. The bond companies challenge us not because of the amount of revenue that we actually generate from that category, but they challenge us on the cap, having it on a category that represents one-third of our potential earning power. That is the difference.

Mr. Hunt: Exactly. I think the flexibility of being able to raise rates and have a meaningful impact on revenue is something that— as we saw during the decline when people were paying high taxes and every year they dropped, then the ceiling would kick back in on the recovery. I think people at the rating agency start looking at that as a very high restriction that if you lost revenue, you cannot recoup it under a capped system.

Chair Furfaro: I guess I am still looking for something that tells us that, not so much that it represents only ten percent (10%) or eleven percent (11%) of our revenue, but their challenge is that it represents one-third of our potential inventory if we had to shift gears quickly. It is not looked unfavorably by the bond company.

Mr. Hunt: I have only had those in phone interview conversations. I have not had that in writing.

Chair Furfaro: We have had this discussion before, but I think it is time that we also surface the bond question as we revisit with the cap. Thank you very much, Steve. Are there any more questions on Bill No. 2555? I am going to go to the public for testimony on Bill No. 2555. Is there any discussion from the members?

There being no objections, the meeting was called back to order, and proceeded as follows:

Ms. Yukimura: I just want to thank Steve and the Administration for being so responsible in terms of proposing taxpayers' relief, but also showing us where the money will come from because that is really important into making our decision about the first Bill. If we want to give relief, we have to know that we have some money to make good our promise. Thank you.

Chair Furfaro: Steve, what it really boils down between the two (2) accounts is that we have four million nine hundred thousand dollars (\$4,900,000) and three million one hundred thousand dollars (\$3,100,000). That is all we have. You are acknowledging that. Thank you.

The motion for passage of Proposed Draft Bill (No. 2555) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for September 24, 2014, and that it thereafter be referred to the Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee was then put, and carried by the following vote:

FOR PASSAGE:	Bynum, Chock, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Chair Furfaro: Thank you. That Bill will be scheduled for public hearing in the near future. Do we have a date for that, Jade?

Ms. Fountain-Tanigawa: Yes, September 24th.

Chair Furfaro: Thank you. Next Bill, please.

There being no objections, Proposed Draft Bill (No. 2556) was taken out of the order.

Proposed Draft Bill (No. 2556) – A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAXES (*Reinstating the Permanent Home Use Tax Limit*): Mr. Rapozo moved for passage of Proposed Draft Bill (No. 2556) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for September 24, 2014, and that it thereafter be referred to the Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee, seconded by Mr. Kagawa.

Ms. Fountain-Tanigawa: We have one (1) registered speaker.

Chair Furfaro: Okay. I am going to suspend the rules. May you read the name of the registered speaker?

Ms. Fountain-Tanigawa: Ken Taylor.

There being no objections, the rules were suspended.

KEN TAYLOR: Chair and Members of the Council, my name is Ken Taylor. Wrestling with the taxes is certainly a difficult situation, but it seems like if you address the residential properties as one aspect of this, and then look at the rest of the commercial endeavors in a package, it would certainly make things a lot easier for you. In the beginning, I was in support of Bill No. 2556, but I really think that what you need to do is simply go back and adopt the 'Ohana O Kaua'i tax initiative. I know some people have said that amendment failed, but it did not really fail. It was passed by the voters 2:1. When it went to Court, it was a 3:2 vote and was a controversial decision there. I do not believe the Courts indicated that the 'Ohana O Kaua'i initiative itself was illegal. What they basically said was that the process had taken the authority away from you folks, so I really believe that you have the ability to initiate the 'Ohana O Kaua'i initiative, which would take care of the residential aspects of the taxing process. That leaves you to deal with vacation rentals, commercial, industrial, agricultural, conservation; and break that down into other subdivisions, but those are the basic issues that you have to grapple with. I think by not mixing residential with them, it makes your job much easier and makes it possible for the public to work with you and follow along as to where and how this all moves forward. I would hope that you take strong consideration into that, move forward, and make it happen. Thank you. I would also just say that it was talked about earlier about not getting into a big hurry and doing things like getting some professional people to work with us collectively; you folks, the community, and the Administration; to get a good understanding of all of this. As I said, the 'Ohana O Kaua'i initiative that was passed by a 2:1 vote really took care of the homeowner aspect. Thank you.

Chair Furfaro: Do we have anyone else registered to speak?

Ms. Fountain-Tanigawa: We have no other registered speakers.

Chair Furfaro: Is there anyone else who wishes to speak on Bill No. 2556. If not, I will call the meeting back to order. Is there any discussion?

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Kagawa: Thank you, Chair. I thank you for placing all of these options on the agenda. I think more options can lead to a better decision. I thank all Councilmembers for submitting their different options. I think we are all trying to avoid having that taxpayer who cannot pay their bill and it is because they feel that the system was not fair to them. I am talking to a lot of people out there in the community and I guess one that I found mindboggling was that the person who has a house in 'Oma'o, who has an Additional Dwelling Unit (ADU), and his intention was to have his niece live there and give her a start as she tries to build her family. She decided not to live there and is living with her boyfriend, so the house is not rented out at all. It is sitting there. The owner prefers not to rent it out at this time and instead of having a homestead tax rate of three dollars (\$3), he is paying a whopping six dollars (\$6) on the whole property, including two (2) houses. Mind you that he is not renting it out to anybody. So with our tax structure, are we forcing the hand of our local homeowners what to do with their property? If they do not want to rent it out, we will tax them double the rate? It bears no burden on the system on the County. There are no users that are going to be living there that is going to be using the parks, calling the police, or what have

you. I just think that at some point, we should have thought through those types of situations. There is not just one situation. There are a lot of people in those situations. There was another one that I just talked to out in Kekaha whose mom went into the care home and the State has put a lean on the property. Now that the homeowner is not living there, we are charging her residential rate, six dollars (\$6) on every one thousand dollars (\$1,000). The family now has not been given the property because the mom is still alive, but she is in a care home. They have to pay that huge bill. Are we forcing them to rent out? We are forcing our people what to do and maybe do what they do not want to do. Maybe they do not want to rent it out and have "wear and tear" on their house or worry about tenants. I just feel like somewhere out there with a little hard work, sweat, and commitment, we can find a better system that works equally for our residents and not have people like Ms. Lopez who pleaded with us for some help at our workshop to keep her family, who does not have much income, living here comfortably. My plea is that let us not look at this as who gets credit or no credit, but as "how do we help the people out there?" People who are struggling; people who are pleading to us; and people who is not their bag to come here and testify and threaten us. There are a lot of quiet people out there who are suffering with their bills. Let us help them. This is how we help them. Let us go back and do a better job on this Bill or whatever tax reform that we come up with. We can do it. I think it can be done. I do not think we did it on this first go-around, just removing the cap. That is how I honestly feel. It is to no discredit of anybody who supported it in the past. I do not think they foresaw these complaints coming in. Why would they pass it if they felt that there would be so much unrest out there in the community? I do not think they expected that to happen, but it did, and how do we fix it? That is the question. Thank you.

Chair Furfaro: I would prefer that if you agree with somebody, you can put your hands up and wave them, but do not applaud. Just give us an indication that you support the testimony. Thank you. Mr. Chock, you have the floor.

Mr. Chock: Thank you, Chair. In the spirit of discussion, I agree that we have to be able to come up with as many solutions and put it on the table as much as possible. We have been having discussions since the workshop and even before then since property tax bills have come up. Mr. Imparato has spoken a lot about the *ad valorem* system and his dislike of it, so I have been asking him for some feedback in terms of how he would see the cap reinstated and he has provided me with some information. So for the sake of discussion, I just wanted to pass that out to Councilmembers. I think we have some copies that we can circulate. It is very detailed and it does give some explanation. I think it is worth the discussion in the future.

Chair Furfaro: Thank you. That is something that we should all be visiting as we take public testimony. I assume that we can find ourselves hearing from Mr. Imparato when we have the public hearing. I do want to say at this point that for the public hearing, you can see that we may probably have a number of people to testify. To the Clerk's Office, we might as well plan on having the afternoon free as we have these public hearings on the Tax Bills.

Ms. Fountain-Tanigawa: We have scheduled it tentatively for 1:30 p.m.

Chair Furfaro: We should probably try to keep the agenda pretty clear for the rest of the afternoon. Are there any more discussion?

Mr. Hooser: Chair, I am going to try to keep my remarks focused on this specific Bill that is in front of us and make my extended comments at the end.

Chair Furfaro: That is fine.

Mr. Hooser: I had a question either for the introducers or the tax director. The question is, as the Bill is written in generally speaking, what are the impacts on those that got tax decreases; whether that has been incorporated into the Bill or what happens to those people? I know the ones that got increases go back, but what about the people who had decreases. That is my question. These are for the introducers or whoever might know the answer.

Mr. Kagawa: I think my intention is that prior to removing the cap, we had a system that was not perfect, but it was working better than the removal of the cap. I feel like if we go back to what we had before and take our time and work on what we have upcoming, I think that is my intention. If it has an effect like you described where a taxpayer has a smaller tax bill now with the new system, I would say that whatever the old system taxes that individual; if he is getting less taxed now, then he has to pay it back or it can go as a credit into the next bill. I would not want to see us exchanging small amounts of money and it could be an accounting nightmare. Perhaps we can just credit the next bill.

Mr. Hooser: So it could be that the five thousand (5,000) people who got tax decreases will now have tax increases? I just want to look at that option and work on ways to alleviate that because it is going to be very difficult to support that kind of avenue going forward.

Mr. Kagawa: Sorry for interrupting, but my response to that is that if it comes out to where... whatever it comes out, it comes out. We are just following the old law. We cannot take the old law and mix in portions of the new law that benefits people. I think we just need to have one system of taxation, either last year's or this new system.

Mr. Hooser: I understand. Thank you. We can have this discussion further at length. I just anticipate a bunch of other people getting surprises when their new bill comes forward. Thank you.

Chair Furfaro: Mr. Rapozo, you have the floor.

Mr. Rapozo: I just want to add on that it is... I guess in my position—I will not speak for Councilmember Kagawa, but the change in the law was flawed. It was wrong and with that came some unintended consequences for people that actually ended up paying more and for some people that ended up paying less. I do not call it a “tax increase” because it is not increasing their tax from what I call is a “correction.” We are going to reset, so that we can have the correction made. It is not a tax increase. It is a tax increase if you look at it as repaying what you paid on a flawed bill. I think that is kind of how I justify it. I know it is difficult, but if we want to fix this once and for all, then there is going to have to be a correction at some point. That was the selling point for this Bill. It was said that “this is the correction year.” Yes, but the correction came on the backs of a few people and it was substantial; substantial enough that they could lose their properties. Understanding that if we reset, somebody may have a tax bill

that they may have to pay what they paid back then, but I think it is not a change for them because that is what they paid. There is no way we are going to fix this tax system and have everybody get a tax rebate or credit because it is not going to work. Somebody is going to pay more. What I guess I am suggesting is that we rushed through this Bill— the intentions were great; do not get me wrong. But the consequences were not so great. We need to go back to where we were, go back to the drawing board, and fix what is broken. Again, that will mean that some people will get— everybody will reset. I think that is the fairest way to say it. Everybody will be reset to where they were, including the County and the revenues generated, which— again, it has always been my position that rather than put the onerous on the taxpayer, thirty thousand dollars (\$30,000), twenty thousand dollars (\$20,000), ten thousand dollars (\$10,000), or whatever it is to adjust your budget to accept it, that we need to look at our side and say, “We need to accept that and make the adjustments as well.” I know we had a lot of talk about where the money is coming from, so I will make this statement now, Mr. Chair, because I think it is targeted to me and Councilmember Kagawa that we are bringing up these tax reliefs, but there is not an accompanying money bill. The bottom line is that there are funds in the County that we can use. Is it something that I want to do like Other Post-Employment Benefits (OPEB)? No, it is not something that I want to do, but if that is where the moneys lie and we can use those funds and stay within the parameters of the law, then that is my suggestion. Let us, the County, figure out a way to recoup those funds at a later time. Thank you.

Chair Furfaro:

Mr. Bynum, you have the floor next.

Mr. Bynum: I was going to try not to comment on each Bill, but there is a reality disconnect from what we just heard because the Bill does not provide tax increases for anyone. The Bill, as written, just takes those people who had increases and makes them owe. Councilmembers Kagawa and Rapozo are advocating for billing those folks that we just gave reductions too, but that is not in the Bill. I just had to point that out. The numbers were here. Steve told us that about seven hundred (700) or eight hundred (800) people were going to have significant tax increases. He told us during budget. I said it over and over again, and we put proposals forward to lower the rate to avoid this. That is what happened. That is what actually happened. What is on the public record is important and the disconnect between the statements we just heard and what the Bill that was presented needs to be addressed.

Chair Furfaro: Okay. Did I take public comment on this Bill? I did, okay. I am going to call this meeting back to order and find if we have any more discussion, and then take a vote on Bill No. 2556. Seeing none, let us have a roll call vote.

The motion for passage of Proposed Draft Bill (No. 2556), as amended, on first reading, that it be ordered to print, that a public hearing thereon be scheduled for September 24, 2014, and that it thereafter be referred to the Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee was then put, and carried by the following vote:

FOR PASSAGE:	Bynum, Chock, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 7*,
AGAINST PASSAGE:	None	TOTAL – 0,

EXCUSED & NOT VOTING: None
RECUSED & NOT VOTING: None

TOTAL – 0,
TOTAL – 0.

*(*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kauaʻi, Councilmember Yukimura was noted as silent but shall be recorded as an affirmative vote for the motion.)*

Chair Furfaro:
Bill No. 2557.

Let us go to the next Bill, Proposed Draft

There being no objections, Proposed Draft Bill (No. 2557) was taken out of the order.

Proposed Draft Bill (No. 2557) – A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUAʻI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAXES (*Low Income Tax Credit*)

Chair Furfaro: If you do not mind, I would like to share with you this Bill that I am introducing. This is for the low income category for people who have homes, but are now finding themselves capped for earnings like social security and the retirement account. Basically, this Bill that I am introducing— I still have to look at a few numbers as it relates to the Housing and Urban Development (HUD) income revenues for the County of Kauaʻi. It basically says that for anyone who is getting up into the retirement areas or retirement age, their property tax would be capped at no more than three percent (3%) of their home income as it relates to property tax. Basically, it says that someone earning fifty-nine thousand dollars (\$59,000) a year will find themselves on the gross, not paying taxes of more than one thousand six hundred eighty dollars (\$1,680).

Mr. Kagawa: I have a question for the maker.

Chair Furfaro: Sure.

Mr. Kagawa: This is just hypothetical and maybe Steve can shed some light later, but is there any situation where on something like this, you could put the property under somebody who meets that circuit breaker amount and avoid paying taxes, especially for a high market property.

Chair Furfaro: It is driven by who the property's deed and name that is enlisted. I know that at points in time, children have taken over parents' property, but the children are high earners, so it is a good question, Mr. Kagawa. It is really focused to be able to identify what fifty percent (50%) of the medium income is for Kauaʻi and for seniors having an opportunity to cap what they pay of their own income. There are still some things that we have to work on, and I do want to make that announcement of all the bills, and I thank you for recognizing that I put all these bills on, but some of them still need reviews by the County Attorney's Office. I do not have all the answers.

Mr. Kagawa: Thank you, Chair.

Chair Furfaro: Is there anyone in the public who wishes to testify on this Bill? If not, I will call the meeting back to order. Is there any discussion?

Ms. Yukimura:

I think we need a motion.

Mr. Kagawa moved for passage of Proposed Draft Bill (No. 2557), as amended, on first reading, that it be ordered to print, that a public hearing thereon be scheduled for September 24, 2014, and that it thereafter be referred to the Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee, seconded by Ms. Yukimura.

Chair Furfaro:

Thank you. Discussion?

Mr. Bynum: I just want to point out that this Bill would really take effect next Fiscal Year and it is a targeted kind of relief and something that I am very interested in. Thank you.

Chair Furfaro:

Okay. Let us do a roll call vote, please.

The motion for passage of Proposed Draft Bill (No. 2557) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for September 24, 2014, and that it thereafter be referred to the Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee was then put, and carried by the following vote:

FOR PASSAGE:	Bynum, Chock, Hooser, Kagawa,	
	Rapoza, Yukimura, Furfaro	TOTAL – 7,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Chair Furfaro:

Can we move onto to the next bill, please?

There being no objections, Proposed Draft Bill (No. 2558) was taken out of the order.

Proposed Draft Bill (No. 2558) – A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAXES (*Retroactive Real Property Tax Measures and Extensions*): Mr. Hooser moved for passage of Proposed Draft Bill (No. 2558) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for September 24, 2014, and that it thereafter be referred to the Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee, seconded by Mr. Rapozo.

Chair Furfaro:

Go ahead, Mr. Hooser.

Mr. Hooser: This is a Bill that is being co-introduced by myself and Councilmember Bynum. There are two (2) main provisions. I will touch on them real quickly. The first one on page 2 basically says that owners can submit a “new use survey form” and if the Director determines that the property was designated incorrectly, then that new use can apply to 2014 as well as moving forward. We had a number of people that came forward and said that when they checked the little box, they did not know what they were checking. People said they

checked the box, thinking they were going to rent it out, but never rented it out. There were a lot of issues like that, which dramatically impacted the tax situation. This will allow them to come in, resubmit, and work with the Director to see if it was incorrectly classified or not. The second part of it stems to what Councilmember Yukimura mentioned earlier, which the County's inability or lack of communication. We all could have done better communicating exemptions and deadlines. If you remember at the tax workshop, somebody said that the County sent a notice out and everybody groaned because the County apparently did not send a notice out, at least in that particular time. There are a number of people who were not aware of the exemptions until now and they legitimately qualify. This will allow them to file for that exemption, whether it is an affordable rental exemption or other exemptions; file for that exemption for the coming year, by the end of this month, so it is a real short fuse. You apply by the end of this month, and then it is retroactive to the prior year. It is not a never-ending opportunity. Now they are aware of it, they are applying this month, and it applies retroactively also. Those are the two (2) main provisions. The first one is with tax credits. I believe the tax correction would be made. The exemptions— honestly, I do not know if it is tax credits or just tax adjustments. That is the intent of these two (2) Bills. Councilmember Bynum, would you like to state further remarks?

Mr. Bynum: I would just add that we are trying to give an opportunity for people— errors get made. We have a system to correct errors. There was an error in my taxes this year and the Tax Department said, "No, that was our error. We will correct it and make you owe." We have a system for that. What this Bill is saying is we are not going to decide whether it was the Real Property Tax office or the person misunderstood. This year, there clearly were a lot of misunderstandings. "If you were eligible on October last year when we do this, then let us do the right thing and give you an opportunity to be reevaluated." The cost is not exact, but we have had lengthy discussions with the Finance Director about how we would pay for this, and that would come during the discussion at Committee. Thank you.

Chair Furfaro: Is there anyone in the public that wishes to testify on this piece? I will call the meeting back to order. Further dialogue?

Mr. Chock: May I ask the Finance Director to come up?

Chair Furfaro: Sure. The rules are suspended. Steve, may I ask you to come up?

There being no objections, the rules were suspended.

Mr. Chock: Thank you, Steve. I just wanted to ask what the implication is that it would have on our staffing and costs if we were to move in this direction.

Mr. Hunt: For the retroactive?

Mr. Chock: Yes.

Mr. Hunt: Depending on the volume that comes through, compliance issues and checks— obviously, if someone states that they were entitled to an exemption that they are applying for the 2015 year does not necessarily mean that they were eligible or would have met the requirements in

2014, so each one would have to be investigated. In reading the Bill itself, I was not real clear whether this would only be impacting those that had an impact from the removal of the Permanent Home Use cap or to all use classes. If someone says, "I have a commercial use within a resort and I want that restaurant separately taxed from the resort." I was not really clear in terms of the scope of the Bill. So I guess my staffing needs would depend on how wide this is going to be and how many applicants come in.

Mr. Chock: It is unforeseen. Okay. Thank you.

Chair Furfaro: Are there any other questions for Steve before I let him go? JoAnn, you have the floor.

Ms. Yukimura: If you were to say that it would be only affective on those affected by the removal of the cap...

Mr. Hunt: Then it would be a smaller pool.

Ms. Yukimura: Would you be able to determine who was affected by removal of the cap versus...

Mr. Hunt: We are talking about changes of use. We do not know that someone is eligible. We do not know if someone was renting for an amount that would make them eligible for the Long-Term Affordable Rental until we actually have the numbers to substantiate that. There is really no way to predict. All I know is that the research to go on a case-by-case submittal of the form for a use change, we would have to first check to see if they even lived on the property as of October of the prior year, to see that they were eligible for any exemptions. Then, of course, the use; if it was a vacation rental and we have evidence that it was as of the date of value, but is not today; we would not allow that claim. So it would just be on a case-by-case basis, which would take time. At a minimum, one (1) full-time staff, potentially depending on the level of compliance that comes along with both this Bill and potentially the next proration of use. It could be as high as three (3) staff members.

Ms. Yukimura: I do not expect you to have an answer today, but if you can think of a way that would be more targeted on those who— I have heard of cases where people did not understand that the survey was going to affect their tax classification and they marked it based on an intention that never happened. If there is a way to be more targeted— not today— but I would be interested in something.

Mr. Hunt: In just general terms, I think the ones that have been coming before you that are the most aggrieved in terms of increases are people that have a home use exemption on their property, were participating in the cap, and have the cap lifted in an environment where the tax rates on those other uses are higher than when they started, as well as a generally increasing market value. I think if we were to sort of narrow the scope— there is between one thousand seven hundred (1,700) and one thousand eight hundred (1,800) properties that were in the cap program, the PHU, that were outside of homestead; various other uses. If there was a way to collectively gather those together, that might be another option.

Ms. Yukimura: I would appreciate it if you could give it some thought and maybe have some answers later on and if our staff could follow-up with the request in writing. Thank you very much.

Chair Furfaro: Councilmember Bynum.

Mr. Bynum: To bring some clarification, who received the use surveys?

Mr. Hunt: They were mailed out to all improved properties.

Mr. Bynum: Including commercial?

Mr. Hunt: Some commercial that would be small-scaled commercial. Some we knew, from going through the list that we did not have to mail out a use survey like a shopping center.

Mr. Bynum: Right. I believe the intention of this Bill is to focus on who is currently in the homestead class; the new one with all the movements. Just to clarify that. Thank you.

Chair Furfaro: Mr. Chock, you have the floor.

Mr. Chock: You do not have to answer this now, but in looking at the proposal from the Administration with the five hundred dollars (\$500)... not paying more than that as opposed to this measure here, which is the retroactive extension. Is there a way that we might be able to make a better determination on which ones have the greater impact, for one, and reach more people, or is it a combination that we want to do?

Mr. Hunt: Again, the sequencing is going to be very important because if multiple bills pass and we pass some sort of a tax credit program, and a relook at the use classification, which may be doing the same work twice; the credit may reach more than the use class or vice versa, just depending on the instance. It is hard to look until we kind of analyze everything.

Chair Furfaro: Mr. Bynum.

Mr. Bynum: I just have a comment.

Chair Furfaro: Okay. Are there any more questions for Steve? If not, thank you, Steve. Do we have any public testimony on these items? If not, I will call the meeting back to order. Mr. Bynum.

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Bynum: I just have a point of clarification. The intention is for everyone who is currently in the homestead class to have this opportunity to see if they were correctly placed and their changes were correct or they have a home exemption. This is not just people who were impacted by the cap; this is someone who got a survey, who was in the homestead class paying three dollars and five cents (\$3.05) with exemptions and misunderstood the question and

checked the box that moved them to vacation rental and their rate went from three dollars and five cents (\$3.05) to eight dollars and ninety cents (\$8.90). We are talking thousands and thousands of dollars for that individual and it is a mistake. This is a separate class of people than those folks who were addressed by the cap. That is why we have to address the costs in both categories if we do both. I just wanted to make that clarification. I cannot live with just leaving those people saying, "Because I misunderstood this question, I get a five thousand dollar (\$5,000) tax increase and you are not going to let me correct it until next year." That is the point of this. Thank you.

Chair Furfaro:
are ready to vote on this.

Anymore comments? If not, it looks like we

The motion for passage of Proposed Draft Bill (No. 2558), as amended, on first reading, that it be ordered to print, that a public hearing thereon be scheduled for September 24, 2014, and that it thereafter be referred to the Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee was then put, and carried by the following vote:

FOR PASSAGE:	Bynum, Chock, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Chair Furfaro:

We are now on the last Proposed Draft Bill.

There being no objections, Proposed Draft Bill (No. 2559) was taken out of the order.

Proposed Draft Bill (No. 2559) – A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAXES (*Tax On Use*): Mr. Hooser moved for passage of Proposed Draft Bill (No. 2559) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for September 24, 2014, and that it thereafter be referred to the Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee, seconded by Mr. Rapozo.

Chair Furfaro: I need a moment of clarification for myself on something, but I will give you the floor, Mr. Hooser.

Mr. Hooser: Thank you. In many ways, I think this is a really key Bill in particular for moving forward. Right now, the "tax by use" has been a big part of the conversation. Right now, if a person owns a property and they have a small office, small rental, or some use other than living in the place, then their property is taxed at the highest use; their entire property. You might have a one (1) bedroom that you are renting out like a short-term vacation rental, which then your entire property is at that rate. What this Bill does is require the County to do it proportionally. If ten percent (10%) of your property is used for vacation rental or ten percent (10%) of your property is used for office or ten percent (10%) is used for even a long-term rental, that does not qualify for low income. Only that ten

percent (10%) is tax at the highest use. I think we should be encouraging people, quite frankly, to rent out their rooms. A lot of people with a fixed income or any income in today's world, it seems like you need a little extra income and we should make it easier for people to have a little rental or a little something. To be clear, this is not about vacation rentals... this is not about entire properties that are one hundred percent (100%) vacation rental because the use would be vacation rental. These are properties where homeowners live and use a portion of it for something other than their own house. It is a big source of that issue. The problem when people were coming forward to talk, they would say that they have to give up twelve thousand dollars (\$12,000) a month income to avoid thirty thousand dollars (\$30,000) in taxes and that kind of thing. To me, it does not make sense to have that. I understand that it would require more work and possibly some reconfiguration of the computer programs, but I think it is an important measure that certainly deserves discussion and I believe passage into policy. Thank you.

Chair Furfaro: Any other members? Mr. Hooser, I just have one question. When it goes to Committee, this is probably the best way, but I am just going to use an example here. If someone has two (2) homes on a property and the property has two thousand four hundred (2,400) square feet of building improvements, which is made up of one (1) eight hundred (800) square feet cottage and a one thousand six hundred (1,600) square feet of residence—that means that two-thirds of the property is their home and one-third of their property is in some other venture like an office or rental—the best and highest use will be allocated accordingly in a percentage. In this particular case, someone is going to be paying homestead on two-thirds of their property as a home and one-third of their property as a commercial piece.

Mr. Hooser: That is correct. That is intent.

Chair Furfaro: Okay. Is it real clear that it is based on so nobody would have to fractionalize what is what? Is it based on pertinent structures in their square footage?

Mr. Hooser: The way the Bill is written is percentage of square footage of the property dedicated to each use. I understand that it gets complicated in terms of implementation. I have talked to Mr. Hunt and they mentioned in the past that they needed a CPR to clearly draw the lines. I would suggest that we rely on an affidavit from the property owner.

Chair Furfaro: I see. Okay.

Mr. Hooser: Just like how we rely on them to check that box, the property owner says "one-third of my property is for this use." We would rely on that and if we find out that people are cheating, then we would deal with that.

Chair Furfaro: Okay. I just wanted to make sure that my assumption of this declaration is not based on having to put some dotted lines and measure up square footage and so forth, that it is based on an affidavit like you said.

Mr. Hooser: Right. That was the intent. It does not specify the affidavit here. We left it open for the tax office if they wanted to do it a different way, but that is the way I suggest. As we move forward, if they want to

put an affidavit type of procedure in the Bill, we could certainly do that. It is important that we point out to the public and everyone else that this is a moving forward measure; it is not a retroactive measure.

Chair Furfaro: I understand at this point, but you can see my question for the clarity.

Mr. Hooser: Right. Thank you, Chair.

Chair Furfaro: Very good. Is there any public testimony on this Bill? Again, this will be going to the public hearing on September 24th in the afternoon. I will call the meeting back to order. Does anyone want the floor? If not, I am going to go ahead and call for a roll call.

The motion for passage of Proposed Draft Bill (No. 2559) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for September 24, 2014, and that it thereafter be referred to the Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee was then put, and carried by the following vote:

FOR PASSAGE:	Bynum, Chock, Hooser, Kagawa, Rapoza, Yukimura, Furfaro	TOTAL – 7,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Chair Furfaro: On that note, I am going to ask that we take our caption break now before we go any further.

There being no objections, the meeting recessed at 3:26 p.m.

The meeting reconvened at 3:38 p.m., and proceeded as follows:

Chair Furfaro: Aloha, we are back from our break. Let us go to Bill No. 2548, Draft 2.

There being no objections, Bill No. 2548, Draft 2, was taken out of the order.

BILL FOR SECOND READING:

Bill No. 2548, Draft 2 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAXES (*Time Share Tax Classification Proposal*): Mr. Kagawa moved for adoption of Bill No. 2548, Draft 2, on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Ms. Yukimura.

Mr. Kagawa moved to amend Bill No. 2548, Draft 2, as circulated, as shown in the Floor Amendment which is attached hereto as Attachment 2, seconded by Mr. Rapozo.

Mr. Kagawa: This floor amendment is simply just a clerical correction. We forgot to underline "Residential Investor." This is pretty much just for housekeeping.

Mr. Hooser: I have a question.

Chair Furfaro: Go ahead.

Mr. Hooser: So underlining means that you are adding in the language.

Mr. Kagawa: Yes.

Mr. Hooser: So we are adding "Residential Investor" to the Time Share Bill?

Mr. Kagawa: Excuse me. Plus, we are taking out the old language "except for vacant property previously classified as apartment shall be classified as hotel and resort until actual use is established." We are taking out that part.

Mr. Hooser: I am looking at Floor Amendment #2.

Mr. Kagawa: Yes.

Mr. Hooser: I see the underlined "Residential Investor", so you are adding that part in. I also see the bracketing down here that is around the comma.

Mr. Kagawa: Yes.

Mr. Hooser: But "Residential Investor" was added in the Time Share Bill?

Mr. Kagawa: I want to call for the question on the amendment.

Chair Furfaro: Okay. There is a call for the question on Floor Amendment #2.

The motion to amend Bill No. 2548, Draft 2, as circulated, as shown in the Floor Amendment which is attached hereto as Attachment 2 was then put, and carried by a vote of 6:1:0 (*Mr. Hooser voting no*).

Mr. Kagawa moved to amend Bill No. 2548, Draft 2, as amended, as circulated, as shown in the Floor Amendment which is attached hereto as Attachment 3, seconded by Mr. Rapozo.

Mr. Kagawa: This amendment will try to take a vote of the whole body since Councilmember Rapozo and I were absent from the Committee to put in Chair Furfaro's recommendation of fifty percent (50%) instead of seventy-five percent (75%).

Chair Furfaro: In the first year.

Mr. Kagawa: Yes.

Chair Furfaro: Okay. You have the floor, Mr. Kagawa.

Mr. Kagawa: Mr. Chair, this is simply that we heard the rationale by the time share managers saying that budgets take one (1) year in advance to prepare for upcoming increased costs in maintenance fees and what have you. This is simply to give the time shares a better chance of succeeding. We do not want what happened to Maui when they really dramatically increased their rates for time share. They had a twenty percent (20%) increase in foreclosures. We do not want to have that kind of effect on the industry. Thank you.

Chair Furfaro: Okay. Discussion? Mr. Hooser.

Mr. Hooser: Pardon me, Chair and Members, if I ask a question that has already been asked, but it seems like we talked about this for a while. Correct me if I am wrong, but at the last Committee Meeting, this was amended and voted on. Is that correct? This is a motion to amend the amended version back again? I got it. I think I have it now. This is also to make it more attractive to the time share industry in terms of less impact. Thank you.

Chair Furfaro: JoAnn.

Ms. Yukimura: The problem of increasing rates that Councilmember Kagawa mentioned is really not an issue on the floor today because we decided in positive response to the time share industry that we would not create a separate category as they have created in Maui. I think it was a huge way of positively addressing the request from the time share industry. That precludes the problem that has happened on Maui where it is a separate category and Maui has put on rates far higher, I understand, than the hotel rate. I do not think that is an issue here. What is an issue is the amount of relief, so to speak, that we are going to give time share. My understanding is that by giving them a seventy-five percent (75%) cap, we are giving one million dollars (\$1,000,000) back to the time share industry and at a fifty percent (50%) cap, it is two million dollars (\$2,000,000) plus.

Chair Furfaro: You are giving back one million dollars (\$1,000,000) if you had one million dollars (\$1,000,000) in the bank. This is yet to be collected.

Ms. Yukimura: Right, but you are not collecting one million dollars (\$1,000,000) or you are not collecting two million dollars (\$2,000,000), if you want to say it that way.

Chair Furfaro: Yes. That is better.

Ms. Yukimura: Okay. After years of having given pretty low rates to the time share industry, we are increasing it, but we are also being very attentive to their needs, so I guess I am going to stay with the seventy-five percent (75%).

Chair Furfaro: Okay. Mr. Bynum.

Mr. Bynum: I do not want to repeat everything I said the last time, but we identified this lost revenue four (4) or five (5) years ago. Now, it is four million five hundred thousand dollars (\$4,500,000). As someone who has introduced five (5) or six (6) proposals over the last five (5) years to reduce taxes for the homestead class and had Councilmembers say, "No, we cannot afford it." Now, the industry comes to us and says, "Okay, we will pony up what we deserve to pay all along," and then we are going to give them one million dollars (\$1,000,000) because we are worried about the impact on business. But all those other times, we were not worried about the impact on people who live here who were having increases. The public record will show over and over again as the Council said, "We cannot hurt business this much. We cannot hurt them that much. Let us protect them." We have not done the same thing for the people who live and work here. I am opposed to this amendment.

Chair Furfaro: Mr. Kagawa, do you want the floor again? I am going to call for the vote on the amendment afterwards.

Mr. Kagawa: Again, one of the most stirring E-mails I got was from a manager at a time share and he told me how he worked many years as a manager for the hotels and now, working for the time share, he expressed to me what an improvement working for the time share is in comparison to the hotel, being that he has had consistent work throughout and did not have to lay off workers. It is an important part of our industry. If we, as a body, feel like we do not want to have unintended consequences upon that industry, I think it is a safe thing to do. We are still going to recognize two million two hundred thousand dollars (\$2,200,000) in time share taxes from this Bill than we did last year. I think two million two hundred thousand dollars (\$2,200,000) is a lot. Councilmembers who disagree want the full three million six hundred thousand dollars (\$3,600,000) with the seventy-five percent (75%) decrease. That is even more. I think we are taking a step in the right direction. There was a wrong valuation problem that was occurring for many years. I do not know why the Administration did not catch it sooner that we were using an old, outdated Florida system for appraising time shares. I sit here today and I am concerned about the industry as a whole and the impact it will have on its workers and on possible foreclosure rates. That is my reason for introducing this amendment. Councilmembers, you can vote it up or down. Thank you.

Mr. Chock: Before we do that, we have a question for the Director of Finance Steve Hunt from Councilmember Rapozo.

Mr. Rapozo: Thank you, Steve. Do we have a problem with time share units that are in foreclosure as far as tax collection?

There being no objections, the rules were suspended.

Mr. Hunt: On our end, I am unaware. I think the HOA either rebills other people as part of the delinquency that they are internally collecting while they are reselling those units, but I do not believe we are in arrears on any time share project taxes.

Mr. Rapozo: On any of them at all?

Mr. Hunt: Not that I am aware of.

Mr. Rapozo: Okay. That was my question. Thank you.

Mr. Chock: Any further questions of Steve? Mr. Hooser.

Mr. Hooser: The amount of money that we are talking about, the couple million dollars that would be under this proposal; if that money is...

Chair Furfaro: Excuse me. We have a technical problem. They lost the audio on the feed right now, so we have to take a recess.

There being no objections, the meeting recessed at 3:50 p.m.

The meeting reconvened at 4:00 p.m., and proceeded as follows:

Chair Furfaro: We are back and have fixed the technical problem. Mr. Kagawa, if you do not want to say anything about your amendment, I am going to call for a vote. JoAnn, we are going to lose members here, so we should get this vote done.

Ms. Yukimura: Okay. I will pass.

Chair Furfaro: May I have a roll call vote on Floor Amendment #1, please?

The motion to amend Bill No. 2548, Draft 2, as amended, as circulated, as shown in the Floor Amendment which is attached hereto as Attachment 3 was then put, and carried by the following vote:

FOR AMENDMENT:	Chock, Kagawa, Rapozo, Furfaro	TOTAL – 4,
AGAINST AMENDMENT:	Bynum, Hooser, Yukimura	TOTAL – 3,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Chair Furfaro: The vote came out to 4:3. Now, we are back on the main motion, as amended.

Ms. Fountain-Tanigawa: Okay. This would now be for Bill No. 2548, Draft 3.

The motion for adoption of Bill No. 2548, Draft 2, as amended, on second and final reading, and that it be transmitted to the Mayor for his approval was then put and carried by the following vote:

FOR ADOPTION:	Bynum, Chock, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 6*,
AGAINST ADOPTION:	Hooser	TOTAL – 1,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

*(*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Bynum and Councilmember Yukimura were noted as voting silent, but shall be recorded as an affirmative vote for the motion.)*

Chair Furfaro: The vote came out to 6:1. The Bill has passed. Let us go to the next item before we lose any members.

There being no objections, Bill No. 2549, Draft 1, was taken out of the order.

BILL FOR RECONSIDERATION:

Bill No. 2549, Draft 1 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAXES (*Residential Investor Tax Classification Proposal*): Ms. Yukimura moved to reconsider Bill No. 2549, Draft 1, seconded by Mr. Chock.

Chair Furfaro: Okay. There is a motion to reconsider with a second. JoAnn, you may have the floor.

Ms. Yukimura: Thank you, Chair. A couple of hours after our meeting where we passed this Bill, I discovered that there was a drafting error, so we need to correct that because in one place of the Bill, it says, “properties that are two million dollars (\$2,000,000) or over in assessed value” and in another place, it says “one million dollars (\$1,000,000).” This is basically a housekeeping at this point to reconcile the two different sections to reflect the intention of the majority who passed the Bill. We would first need to reconsider, and then assuming the reconsideration process, I would again move to approve the Bill and propose an amendment.

Chair Furfaro: Okay. Do we do a roll call vote here for the reconsideration?

Ms. Fountain-Tanigawa: We can do it that way.

Chair Furfaro: Okay. I would like us to do it that way, please.

Ms. Fountain-Tanigawa: Okay.

Ms. Yukimura: I am sorry, but I want to ask if anybody has any questions about this? Does everybody know what to vote on? Okay. Thank you.

Chair Furfaro: Do I have motion to reconsider and a second?

Ms. Yukimura: Yes.

Chair Furfaro: Okay. Let us call for a vote on the reconsideration.

The motion to reconsider Bill No. 2549, Draft 1, was then put, and carried by the following vote:

FOR RECONSIDERATION:	Bynum, Chock, Hooser, Rapozo, Yukimura, Furfaro	TOTAL – 6,
AGAINST RECONSIDERATION:	Kagawa	TOTAL – 1,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Chair Furfaro: Okay. JoAnn, you have the floor.

Ms. Yukimura moved for adoption of Bill No. 2549, Draft 1, on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Mr. Chock.

Ms. Yukimura moved amend Bill No. 2549, Draft 1, as circulated, as shown in the Floor Amendment which is attached hereto as Attachment 4, seconded by Mr. Bynum.

Ms. Yukimura: Has the floor amendment been circulated?

Mr. Rapozo: No, I do not have anything.

Ms. Yukimura: Where is Peter? Do they have the Draft 1 as well, Peter? I want people to see that the part we amended in the last Bill was the definition of "Residential Investor." On page number 3 of the Bill, the figure is still one million dollars (\$1,000,000) and that is what we have to reconcile because there is an inherent conflict in the existing draft right now. One place says "two million dollars (\$2,000,000)" and the other place says "one million dollars (\$1,000,000)." This amendment changes it to two million dollars (\$2,000,000), so it is clear and aligned.

Chair Furfaro: So the second to the last piece here...

Ms. Yukimura: It is on the back page, Chair.

Chair Furfaro: I do not have a back page. Am I supposed to have a back page?

Ms. Yukimura: Yes. It is Section 3(d). You are right. The amendment is on page number 2 at the bottom, Chair.

Chair Furfaro: The amendment is there. The references you are making are to the actual Bill.

Ms. Yukimura: Correct. Thank you. Are there any questions?

Mr. Rapozo: I have a question. The motion to reconsider basically nullifies the last vote.

Ms. Yukimura: Correct.

Mr. Rapozo: Therefore, the amendments that would pass in the last vote would have to be voted on again.

Ms. Yukimura: You are right.

Mr. Rapozo: I know I am right.

Mr. Hooser: And modest too.

Mr. Rapozo: No, we do this often enough that these are the kinds of things that should not happen. You are basically taking the Bill in its original form—you voted on the amendments at the last meeting, correct?

Ms. Yukimura: So we are reconsidering Draft 1.

Mr. Rapozo: Just Draft 1?

Ms. Yukimura: Yes, we are reconsidering Draft 1, which is the Bill that was passed. I am sorry, I do not think you are right.

Mr. Rapozo: Okay.

Ms. Yukimura: We are reconsidering the Bill that was passed, and then we are bringing it back on the floor and proposing to amend it.

Chair Furfaro: Hold on for a second. The reconsideration would have taken us, afterwards, back to the place we were before it was amended.

Ms. Yukimura: No, I do not think so.

Chair Furfaro: Scott, come up to the mic. I just want to get this clear.

Mr. Sato: Scott Sato, Council Services Staff. The motion to reconsider, because it was approved by the Council, puts the Council back to the final place right before the final vote was taken. In that location, all the amendments have already been passed, so you are at that final consideration, but at that point, amendments can still be made because the final vote on the main motion, as amended, has not been taken.

Chair Furfaro: Right.

Ms. Yukimura: Thank you for being very clear, Scott.

Chair Furfaro: It helps to bring up our...

Ms. Yukimura: Parliamentary.

Chair Furfaro: Our parliamentary authority.

Ms. Yukimura: Thank you.

Mr. Rapozo: Okay.

Ms. Yukimura: Are we voting on the amendment right now,
Chair?

Chair Furfaro: Yes.

Ms. Yukimura: Okay.

Chair Furfaro: I am going to call for a roll call vote.

The motion to amend Bill No. 2549, Draft 1, as circulated, as shown in the Floor Amendment which is attached hereto as Attachment 4 was then put, and carried by the following vote:

FOR AMENDMENT:	Bynum, Chock, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST AMENDMENT:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Chair Furfaro: Okay. Let us go to the main motion, as amended.

The motion for adoption of Bill No. 2549, Draft 1, as amended, on second and final reading, and that it be transmitted to the Mayor for his approval was then put, and carried by the following vote:

FOR ADOPTION:	Bynum, Chock, Yukimura, Furfaro	TOTAL – 4,
AGAINST ADOPTION:	Hooser, Kagawa, Rapozo	TOTAL – 3,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Chair Furfaro: Now, do we have any business that we need to jump to as we have Mr. Chock leaving soon?

Ms. Fountain-Tanigawa: We can go to the last Bill for First Reading on page number 5, Proposed Draft Bill (No. 2553).

There being no objections, Proposed Draft Bill (No. 2553) was taken out of the order.

BILL FOR FIRST READING:

Proposed Draft Bill (No. 2553) – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2014-782, AS AMENDED, RELATING TO THE CAPITAL BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2014 THROUGH JUNE 30, 2015, BY REVISING THE AMOUNTS ESTIMATED IN THE BOND FUND (*Bond Fund – CIP, Fuel Tanks Hanalei Baseyard – \$9,755*): Mr. Kagawa motion for passage of Proposed Draft Bill (No. 2553) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for October 8, 2014, and that it thereafter be referred to the Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee, seconded by Ms. Yukimura, and carried by the following vote:

FOR PASSAGE:	Bynum, Chock, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Chair Furfaro: Is there anything left on our agenda that is critical for Mr. Chock to be present? I want to thank you for giving us this time. If I could valet you to the airport, I would. Have a good trip.

(Mr. Chock is noted as excused.)

Chair Furfaro:

Okay. Let us keep moving.

COMMUNICATIONS:

C 2014-242 Communication (08/18/2014) from the Executive on Transportation, requesting Council approval to receive, indemnify, and expend State of Hawai'i funds appropriated by the State Legislature through Act 122, Session Laws of Hawai'i (SLH) 2014, in the amount of \$600,000, to support the construction of public transportation bus stop shelters for the County of Kaua'i: Ms. Yukimura moved to approve C 2014-242, seconded by Mr. Rapozo.

Chair Furfaro:

Does anyone wish to testify on this item?

Ms. Yukimura:
Transportation to come up?

Chair, can we get the Executive on

Chair Furfaro:

Okay. Celia, please come up.

Ms. Yukimura:

Thank you, Chair.

There being no objections, the rules were suspended.

CELIA M. MAHIKOA, Executive on Transportation: Celia Mahikoa,
Executive on Transportation.

Ms. Yukimura: Thank you for being here. I am asking you to come forward because there are so many requests that your agency is getting for bus shelters, that I wanted to get an update, if we could, given this good news of a State legislative appropriation of six hundred thousand dollars (\$600,000) for bus shelters. I want to acknowledge our State Legislators for their attention and support for this issue that is so important to our community, especially our bus riders. Could you tell us what these six hundred thousand dollars (\$600,000) would enable us to do in terms of bus shelters?

Ms. Mahikoa: Sure. We are extremely grateful for the opportunity to have additional funding to assist us with providing better facilities for our riders. The six hundred thousand dollars (\$600,000) will allow us to, in addition to the three hundred thousand dollars (\$300,000) that was provided in this Fiscal Year through CIP funding with the County, would give us a total of nine hundred thousand dollars (\$900,000), whereby we are estimating that it would provide about eighteen (18) to twenty (20) additional locations, which would include making the area accessible like sidewalk connectivity and making sure it is Americans With Disabilities (ADA) compliant, as well as the structure and the accessories that we are including in this project.

Ms. Yukimura:

So there will be shelter from rain and sun?

Ms. Mahikoa:

Yes.

Ms. Yukimura:

Lights at night?

Ms. Mahikoa: Yes.

Ms. Yukimura: Also trashcans?

Ms. Mahikoa: Trash and recycle bins, as well as a bike rack for bike riders to secure their bicycles at the stops.

Ms. Yukimura: Excellent. Did you arrange for pickup of the trash? Have we figured that out?

Ms. Mahikoa: Yes. We already have intermittent pickup, and then to be able to extend that.

Ms. Yukimura: Right. Will these be located around the island based on priority need?

Ms. Mahikoa: Yes. We are doing our best to fairly install them throughout the different areas on the island and at the same time, also include in the analysis the demand for those areas. It would be the high ridership locations in each of the districts as just a more general part of our formula in determining the locations.

Ms. Yukimura: Okay. Very good. Thank you very much. Thank you for your work on this.

Ms. Mahikoa: Thank you.

Chair Furfaro: Mr. Hooser.

Mr. Hooser: I just had a specific question. In Hanamā'ulu, I drive through there almost every day and I see some of these poor folks sitting out in the dust or in the rain. Is that on the list?

Ms. Mahikoa: Actually, Hanamā'ulu East Bound is on the list of this first group of six (6) that we just awarded the contract for construction. I believe it was last month, so we are working on getting through the final contract right now and we should have the Notice to Proceed, I am hoping, within the next month, and then we will have a groundbreaking on the first six (6), of which the East Bound Hanamā'ulu bus stop is one of those.

Mr. Hooser: The West Bound one is the one that I am thinking of, on the *mauka* side, yes.

Ms. Mahikoa: Right. That one would either be in the second or third stage. I am sorry, I do not have the actual list here with the stages.

Mr. Hooser: That is fine. Thank you very much.

Chair Furfaro: Celia, how much have we set aside for bus stops over the last couple of years?

Ms. Mahikoa: For this project, bus stop improvements...

Chair Furfaro:
slow it has been.

For any bus stops. I am discouraged at how

Ms. Mahikoa: Honestly, so are we. Just the process is extremely slow and it is not by any means from our inattentiveness to the project. We have been wanting it to be up as soon as possible, naturally for our riders who are riding the bus every day and standing out there in the rain and sun. We are doing our best to keep the project moving for the sake of our riders. We have been able to get the plans done for the forty-nine (49) locations, have the initial contract for the first six (6) to be constructed. We are hoping to breakdown within the next couple of months, and then beyond that, this additional six hundred thousand dollars (\$600,000) plus the additional three hundred thousand dollars (\$300,000) that were provided in this year's CIP should be able to proceed quite quickly, so that we should have a total of about twenty-four (24) of them by the end of the next calendar year is what the timeline is looking like right now. Once it starts moving, then the progress will be seen. Just to get to this point has been extremely long and arduous.

Chair Furfaro: Again, it is no reflection on the things you are trying to push with urgency, but it is nine hundred thousand dollars (\$900,000) to get us about twenty-four (24) bus stops.

Ms. Mahikoa: Actually, it is one million two hundred thousand dollars (\$1,200,000).

Chair Furfaro: Okay. It just seems that for a project like that for forty-two thousand dollars (\$42,000) a bus stop— at Habitat, I was able to build a two (2) bedroom home for that kind of money. It is like do these contractors not realize the fact that that is good money for these projects, yet the timeline for this is just— anything we can do to send some urgency, let us know.

Ms. Mahikoa: Thank you.

Chair Furfaro: It is time we get this thing moving.

Ms. Mahikoa: For the sake of our riders, I appreciate that very much. Thank you.

Chair Furfaro: *Mahalo* to you for all of your *kōkua*, but this is not loose change here.

Ms. Mahikoa: Right.

Chair Furfaro: JoAnn.

Ms. Yukimura: Yes. Just so that people know, it includes the engineering that has to be done to assure that people on wheelchairs can access the bus stop and also get onto the bus. It is not just plopping a bus shelter there. It takes grading, engineering, and all of that, and I felt like your department did really wisely in terms of contracting for engineering services, so once we got that done on forty-nine (49) sites, we can then proceed with the building of it. I think you are right. It has taken a long time to do the leg work; the advance work so to speak, but hopefully we will see them popping up now, Chair.

Chair Furfaro: Thank you for putting the chocolate frosting on the donut. I built hotels in sixteen (16) months to get them open. We are going two (2) years and we have a plan. There needs to be some urgency. Any help you can get from me, I will be glad to talk to anybody I need to talk to for you. I understand that with ADA compliance and so forth that it is a long time coming. That is my point. I certainly understand all the particular details on a critical path to get us at the right place, for the right reason, and any help, we are ready.

Ms. Mahikoa: Thank you. I appreciate that.

Chair Furfaro: Anybody else? Do we have any more for Transportation today?

Ms. Fountain-Tanigawa: We have another item.

Ms. Yukimura: We have to vote on it.

Chair Furfaro: I understand that. I know those things, but I do not want her to vacate the chair if nobody else is going to give testimony.

Ms. Yukimura: I just want to have a discussion before the vote.

Chair Furfaro: Okay.

There being no objections, the meeting was called back to order, and proceeded as follows:

Ms. Yukimura: Again, I just want to acknowledge Senator Kouchi and Representatives Morikawa, Kawakami, and Tokioka, for this money, which is going to enable us to put many bus shelters into place on this island. As our Executive on Transportation has said, people are standing daily in the hot sun, rain, dust, and noise, so this will help make bus transportation easier and pleasant. I also want to say that this is one million dollars (\$1,000,000) worth— you said a total of two million four hundred thousand dollars (\$2,400,000). It is not cheap. I do not know anybody else who can show us that we can do it cheaper. That is why not raising one million dollars (\$1,000,000) in revenues means a lot of difference in terms of available services or not. If we want to build our bus system, we have to provide the revenues to do it. Every time we decline to secure those revenues, we are not preparing for the future.

Chair Furfaro: Okay. I, too, extend my courtesies to Ron and everybody else, but do we have anymore here before we need to vote? If not, let us do a roll call vote.

The motion to approve C 2014-242 was then put, and carried by the following vote:

FOR APPROVAL:	Bynum, Hooser, Kagawa, Rapozo,	TOTAL – 6*,
	Yukimura, Furfaro	TOTAL – 0,
AGAINST APPROVAL:	None	TOTAL – 1,
EXCUSED & NOT VOTING:	Chock	TOTAL – 0.
RECUSED & NOT VOTING:	None	

*(*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Bynum was silent (not present), but shall be recorded as an affirmative vote for the motion.)*

Chair Furfaro:
the Transportation Agency?

Can we go to the next item that deals with

C 2014-243 Communication (08/18/2014) from the Executive on Transportation, requesting Council approval to accept funds in the amount of \$24,300 from the developer of Waipouli CVS/Longs Drugs facility, KZ Development Company, for the purchase of two (2) public bus stop passenger shelters with photovoltaic lighting and bike racks, which will comply with project requirements to address serving the public transit needs of the area impacted: Mr. Kagawa moved to approve C 2014-243, seconded by Ms. Yukimura.

Chair Furfaro: Celia, what are we going to get from CVS for twenty-four thousand dollars (\$24,000)?

There being no objections, the rules were suspended.

Ms. Mahikoa: It is going to be two (2) shelters and the accessories that come with it like the photovoltaic system, bike racks, trash receptacles, and recycling.

Chair Furfaro: Can you do us a favor and reflect on the forty-five thousand dollar (\$45,000) cost versus the twenty-four thousand dollar (\$24,000) cost? What are the major differences?

Ms. Mahikoa: The difference is the actual preparing of the ground and the slab provision for the location.

Chair Furfaro: So it is for construction costs?

Ms. Mahikoa: Right, quite a difference.

Chair Furfaro: Okay. Mr. Hooser.

Mr. Hooser: Is this a requirement of their permitting or was this just out of the generosity of their heart?

Ms. Mahikoa: They included us in the review of the plan afterwards at which point we came into the discussion requesting this accommodation for the community in that area. There is a line, I believe it is item number 13 within the Planning Commission's letter, that includes any additional type of request being made by other agencies, so we came in under that item within the Planning Commission's letter, just requesting this from them if they would be able to assist with the added movement of people due to their projects.

Mr. Hooser: So it was a request, not a requirement?

Ms. Mahikoa: I do not believe that there is anything in code that would require them to do this. At the moment, ultimately, that would be an ideal thing for the future, but as if right now, no.

Mr. Hooser: We can tell them thank you for the request that we have been required. Thank you.

Chair Furfaro: That is a good point. We should check what the condition of their zoning was. Mr. Rapozo.

Mr. Rapozo: This is a follow-up question. The letter says "to comply with its project requirements," so I am not sure. Obviously, we do not have the zoning application, but why would we not have just let them build it?

Ms. Mahikoa: Actually, I am glad you asked that because that was our first approach, which was to look at that immediate area and see if it would be a reasonable request of them to just build one when they were doing the pullout lane for the turn lane for the facility; however, I am sure that anyone who has driven around that area knows that area is not a very good pedestrian area. Anytime we would have a bus stop setup, we would need a bus stop also located in the opposite direction. We would not want to be encouraging additional pedestrian traffic there. We sat down with State Highways representatives as well and the County Transportation Planner Lee as well, and we all kind of discussed it and decided that this would probably be a better location of a bus stop where they would be able to provide us and assist the public with actual sheltering.

Mr. Rapozo: I guess it is difficult without seeing what the condition was, but I know that it is going to take the County a lot longer to put that up than if we had made them do it.

Ms. Mahikoa: Fortunately, because we have the existing plans, we are trying to strategize to best use it within the existing plans that we have to just add it on to the existing project, rather than as a completely separate purchase and everything.

Mr. Rapozo: That is even more concerning because as the Chair said, it has been many years and we just have not seen the products... we have not seen the bus stops.

Ms. Mahikoa: Right.

Mr. Rapozo: So you put it on the existing list and how long before we see those bus stops? I understand that these guys want to be open by October or something?

Ms. Mahikoa: Right.

Mr. Rapozo: I am not going to vote against it, but I am just saying that if the condition is for them to provide the bus stops— you are not sure?

Ms. Mahikoa: No, it did not say "bus stops." It was more of a negotiated and agreed upon amount that they chose to assist with, covering the cost of the structures that would be installed at two (2) bus stops.

Mr. Rapozo: How much does it cost the County to put up a bus stop?

Ms. Mahikoa: If you are going from scratch like we are with all of the ones currently, I believe we are looking at probably about forty thousand dollars (\$40,000) to forty-five thousand dollars (\$45,000) right now.

Mr. Rapozo: And they are paying just twelve thousand one hundred fifty dollars (\$12,150)?

Ms. Mahikoa: Just for the structure.

Mr. Rapozo: Right. That was the negotiated...

Ms. Mahikoa: Right.

Mr. Rapozo: I can see why they agreed. They are getting away cheap. I would much rather see them... they have all the construction there, equipment, and the money. They could have built the set of— at the time of opening, they would have had those bus stops. I do not know how long it will be before we see bus stops in that area.

Ms. Mahikoa: It would have been ideal if that would have been a good area to have a bus stop, but unfortunately, that is not the case in that location.

Mr. Rapozo: Where is it going to be? I am sorry.

Ms. Mahikoa: The exact location has not been determined yet for these two (2), but we are hoping to be able to utilize it in an area that is not going to need too much construction.

Mr. Rapozo: Is it going to service the store?

Ms. Mahikoa: The bus stop— if it ends up being the one just down the street, then yes, ideally individuals would be using that bus stop in order to access their facility.

Chair Furfaro: Okay. It looks like it was a condition that was added in this letter I am reading from Mike. It indicates that something might have been triggered from your department that added it. Under number 13, it says, "the applicant is advised," and this is Mike from Planning, "that additional government agency conditions may be imposed and it shall be the applicant's responsibility to resolve those conditions with the respective agencies or agency." It might have been something that came from your office.

Ms. Mahikoa: Thank you.

Chair Furfaro: That is the best we got here. JoAnn.

Ms. Yukimura: I appreciate the discussion. You folks are getting money rather than a bus stop. The money will be used to create a bus shelter. Arguably, they could have been requested to give forty-two thousand dollars (\$42,000).

Ms. Mahikoa: I suppose so.

Mr. Rapozo: Eighty thousand dollars (\$80,000).

Ms. Yukimura: Yes, each.

Ms. Mahikoa: I suppose so.

Ms. Yukimura: I guess that is something from a policy standpoint that your department might want to develop. I guess we could also explore legislation to be more specific to give you more grounds to negotiate.

Ms. Mahikoa: That would be ideal.

Ms. Yukimura: That is a good question that was asked.
Good questions. Thank you.

Ms. Mahikoa: Thank you.

Chair Furfaro: Yvette circulated something to all of us that was in a correspondence on the 11th, where Celia, this is you ten (10) months ago indicating that you wanted the bus stops and so forth, and this is in confirmation with condition number 13, setup by Mike Dahilig. Condition number 13 was the one that I just read. Thank you for your work. I think Mel's and JoAnn's point was that you have to give some thought to the... if you are going to mandate to a development about a bus stop, they may want to argue that the aesthetics is consistent with the look they have versus putting the standard bus stop there. It is something that you need to research and think about as JoAnn and Mel pointed out. Thank you for what you did.

Ms. Mahikoa: Sure. Thank you.

Chair Furfaro: Are we okay here everyone? Is there anyone who wants to give testimony on the bus stops at the new Longs Drugs? If not, I am going to call the meeting back to order and go ahead and vote again.

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Rapozo: Mr. Chair, if I may?

Chair Furfaro: Go ahead.

Mr. Rapozo: I just want to get more information on that. I will support it today because I think it is a done deal since negotiations were already made, but I am concerned that money will go into a pot that will not service that entity. I think the store would want the bus stop in front of their facility. It brings traffic to their door, but I am just very cautious and nervous that the amounts of moneys—I am submitting a request to have this item on a later agenda to get a better breakdown of what moneys went into bus shelters and how many has been built because I do not think that—if, in fact, we are going to be requiring developers to pay money for bus shelters, it has to be what it is going to cost to build those shelters, not just a percentage of it, and that is what this is. I think the store got away pretty cheap on this one paying twelve thousand dollars (\$12,000). Again, we may never see bus shelters for that area.

Chair Furfaro: We can put the subject matter on a future item for sure.

Mr. Rapozo: Okay. Thank you.

Chair Furfaro: That is what we were able to dig up. Thank you, Yvette. We will go ahead and call for a vote here.

The motion to approve C 2014-243 was then put, and carried by the following vote:

FOR APPROVAL:	Bynum, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 6*,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

*(*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Bynum was silent (not present), but shall be recorded as an affirmative vote for the motion.)*

Chair Furfaro: Celia, you are *pau* for the day. Let us go to the next item, please.

(Councilmember Bynum was noted as present.)

C 2014-244 Communication (08/21/2014) from the Director of Parks and Recreation, requesting Council approval to accept a donation of a skip of Base Line field marking material, valued at three hundred fifty dollars (\$350), from Mr. Joey Silva, Crop Production Services, Inc.: Mr. Kagawa moved to approve C 2014-244 with a thank-you letter to follow, seconded by Ms. Yukimura, and carried by a vote of 6:0:1 *(Mr. Chock was excused)*.

C 2014-245 Communication (08/25/2014) from the Housing Director, requesting Council approval to decline the repurchase of Unit No. 706 in Ho'okena at Puhi, 2080 Manawalea Street, Lihu'e, Hawai'i, and grant the owner a one-year waiver of the buyback to allow a market sale by the owner: Mr. Kagawa moved to approve C 2014-245, seconded by Ms. Yukimura, and carried by a vote of 6:0:1 *(Mr. Chock was excused)*.

C 2014-246 Communication (09/02/2014) from Councilmember Yukimura, requesting Council reconsideration of Bill No. 2549, Draft 1, relating to Real Property Taxes: Ms. Yukimura moved to receive C 2014-246 for the record, seconded by Mr. Kagawa, and carried by a vote of 6:0:1 *(Mr. Chock was excused)*.

Chair Furfaro: Please take us to our next item.

CLAIM:

C 2014-247 Communication (08/28/2014) from the Deputy County Clerk, transmitting a claim filed against the County of Kaua'i by Meredith Stuart Murphy, for personal damages and damage to her vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i: Mr. Kagawa moved to refer C 2014-247 to the County

Attorney's Office for disposition and/or report back to the Council, seconded by Ms. Yukimura, and carried by a vote of 6:0:1 (*Mr. Chock was excused*).

COMMITTEE REPORT:

FINANCE & ECONOMIC DEVELOPMENT (TOURISM / VISITOR INDUSTRY / SMALL BUSINESS DEVELOPMENT / SPORTS & RECREATION DEVELOPMENT / OTHER ECONOMIC DEVELOPMENT AREAS) COMMITTEE:

A report (No. CR-FED 2014-30) submitted by the Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee, recommending that the following be Approved as Amended on second and final reading:

“Bill No. 2548, Draft 1 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAXES (*Time Share Tax Classification Proposal*),”

Mr. Rapozo moved for approval of the report, seconded by Mr. Bynum, and carried by a vote of 6:0:1 (*Mr. Chock was excused*).

Ms. Fountain-Tanigawa: Chair, the last item of the day is on page number 5, Resolution.

RESOLUTION:

Resolution No. 2014-43 – RESOLUTION CONFIRMING COUNCIL REAPPOINTMENT TO THE PUBLIC ACCESS, OPEN SPACE, AND NATURAL RESOURCES PRESERVATION FUND COMMISSION (*Joseph K. Figaroa – Anahola – Hā'ena*): Ms. Yukimura moved for adoption of Resolution No. 2014-43, seconded by Mr. Bynum.

Chair Furfaro: Does anyone wish to testify on this item?
You may come up.

There being no objections, the rules were suspended.

FELICIA COWDEN: My name is Felicia Cowden. I would say that Joseph Figaroa has done an excellent job and I appreciate all of the work. The Public Access, Open Space, and Natural Resources Preservation Fund Commission is amazing. Thank you.

Chair Furfaro: Okay. I will call this meeting back to order.
Members?

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Bynum: I just want to reflect that I really appreciate Joseph's work. I have gotten to know him and the Commission is doing wonderful work, as also a number of our Commissions. Thank you.

Chair Furfaro: Further discussion? I just want to point out that earlier today, perhaps there was some misunderstanding that people who are appointed to the Boards and Commissions actually earn a salary, and that is the farthest thing from it. Whether it is the Planning Commission or the Police Commission, this is all community volunteered services and we are very grateful for the people who have stepped forward. May I have a roll call vote, please?

The motion for adoption of Resolution No. 2014-43 was then put, and carried by the following vote:

FOR ADOPTION:	Bynum, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Chock	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

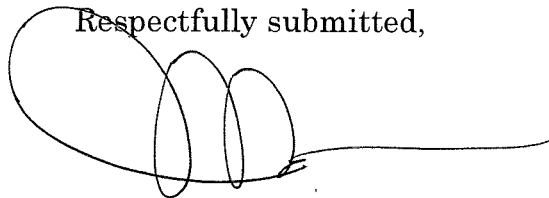
Mr. Kagawa moved to adjourn the September 10, 2014 Council Meeting, seconded by Ms. Yukimura, and carried by a vote of 6:0:1 (*Mr. Chock was excused*).

Chair Furfaro: We are now adjourned. Thank you.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 4:39 p.m.

Respectfully submitted,

A handwritten signature in dark ink, consisting of several loops and a long horizontal stroke extending to the right.

JADE K. FOUNTAIN-TANIGAWA
Deputy County Clerk

:cy

(September 10, 2014)

FLOOR AMENDMENT

Bill No. 2554, Relating To Real Property Taxes (*Real Property Tax Relief for the 2014 Tax Year*)

Introduced by: MASON K. CHOCK, SR.

1. Amend Bill No. 2554 by amending SECTION 2 (d) (2) to read as follows:

“(2) A tax credit shall be issued for seventy percent (70%) of the assessed taxes which exceed the sum of the taxes assessed for the 2013 tax year plus five hundred dollars (\$500.00).”

(Material to be deleted is bracketed. New material to be added is underscored.)

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(September 10, 2014)
FLOOR AMENDMENT # 2

Bill No. 2548, Draft 2, A Bill For An Ordinance Amending Chapter 5A, Kaua'i County Code 1987, As Amended, Relating to Real Property Taxes (*Time Share Classification Proposal*)

Introduced by: ROSS KAGAWA

Amend Section 2 of Bill No. 2548, Draft 2, by amending subsection (a) Chapter 5A, Section 5A-8.6.4 to read as follows:

SECTION 2. Chapter 5A, Section 5A-6.4, of the Kaua'i County Code 1987, as amended, is hereby amending subsection (a) to read as follows:

“(a) For purposes of tax rates, real property shall be classified into one (1) of the following general classes according to the property's actual use unless otherwise provided in this Chapter:

- (1) Residential.
- (2) Vacation rental.
- (3) Commercial.
- (4) Industrial.
- (5) Agricultural.
- (6) Conservation.
- (7) Hotel and resort.
- (8) Homestead.
- (9) Residential Investor.

Vacant property shall be classified as zoned until actual use is established[, except for vacant property previously classified as apartment shall be classified as hotel and resort until actual use is established]. If a property has multiple actual uses, it shall be classified as the use with the highest tax rate.”

(Material to be deleted is bracketed. New material is underscored.)
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(September 10, 2014)
FLOOR AMENDMENT # 1

Bill No. 2548, Draft 2, A Bill For An Ordinance Amending Chapter 5A, Kaua'i County Code 1987, As Amended, Relating to Real Property Taxes (*Time Share Classification Proposal*)

Introduced by: ROSS KAGAWA

Amend Section 3 of Bill No. 2548, Draft 2, by amending subsection (f) Chapter 5A, Section 5A-8.1 as follows:

SECTION 3. Chapter 5A, Section 5A-8.1, of the Kaua'i County Code 1987, as amended, is hereby amending subsection (f) to read as follows:

“(f) Real Property Subject to a Time Share Plan.

(1) The assessed value of time share units shall be pursuant to Section 5A-8.1, provided that for the 2015 tax year the assessed value of a time share unit shall be capped at [seventy five percent (75%)] fifty percent (50%) of the difference between the assessed value of the time share unit for the 2014 tax year and the fair market value of the time share unit for the 2015 tax year. Commencing with the assessments for the 2016 tax year, time share units shall be assessed at 100% of their fair market value. Assessments under this Section shall be issued to the time share plan manager.

(2) Where appropriate and as required by the context in which they appear, words and phrases used in this Subsection including, but not limited to, “developer,” “plan manager,” “time share interest,” “time share plan,” and “time share unit” shall have the meanings ascribed to them by Chapter 514E, Haw. Rev. Stat., as amended.

(3) The Director may adopt rules pursuant to Chapter 91, Haw. Rev. Stat., necessary for the purposes of implementing this Subsection.”

(Material to be deleted is bracketed. New material is underscored.)

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(September 10, 2014)

FLOOR AMENDMENT

Bill No. 2549, Draft 1, Relating to Real Property Taxes (*Residential Investor Tax Classification Proposal*)

Introduced by: JOANN A. YUKIMURA

1. Amend Section 3 of Bill No. 2549, Draft 1, by amending Chapter 5A, Section 5A-6.4 of the Kaua'i County Code 1987, as amended, to read as follows:

SECTION 3. Chapter 5A, Section 5A-6.4, of the Kaua'i County Code 1987, as amended, is hereby amended in its entirety to read as follows:

(a) For purposes of tax rates, real property shall be classified into one (1) of the following general classes according to the property's actual use unless otherwise provided in this Chapter:

- (1) Residential.
- (2) Vacation rental.
- (3) Commercial.
- (4) Industrial.
- (5) Agricultural.
- (6) Conservation.
- (7) Hotel and resort.
- (8) Homestead.
- (9) Residential Investor.

Vacant property shall be classified as zoned until actual use is established [, except for vacant property previously classified as apartment shall be classified as hotel and resort until actual use is established]. If a property has multiple actual uses, it shall be classified as the use with the highest tax rate.

(b) When property is divided into condominium units, each unit shall be (1) classified upon consideration of its actual use into one (1) of the general classes in the same manner as other property, and (2) deemed a parcel and assessed separately.

(c) Parcels which are used for no other purpose than as the owner's principal residence shall be classified as "homestead" provided

that the owner has applied for and has been granted a home exemption according to Sec. 5A-11.4. The homestead class shall also include parcels used as the owner's principal residence which are being assessed according to their agricultural use as provided in Sec. 5A-9.1; provided that the owner has been granted a home exemption and that no portion of the parcel be used for a purpose other than the owner's principal residence and agriculture. The agricultural use shall be limited to the cultivation of crops, pasturing of animals, and cultivation of aquaculture products, and uses which directly support the agricultural activity such as windbreaks, access roads, irrigation ditches and sheltering of farm machinery. Uses which are primarily commercial or industrial in nature, such as importing, selling, refining or distributing agricultural products, shall not qualify for the homestead class. The residentially-used portions of agricultural land shall be assessed according to their value in residential use. The homestead class shall also include parcels used as day care centers by licensed day care providers; provided that the owner has been granted a home exemption, no portion of the parcel is used for any other commercial activity, and that owner has provided a current copy of the day care provider license to the Director on or before September 30th prior to the applicable tax year. The homestead class shall also include parcels that have applied for and have been deemed a long term affordable rental pursuant to Sec. 5A-11A.1. "Homestead" shall mean properties which are used exclusively as the owner's principal residence, except as otherwise provided in this Section. Uses which shall not qualify as "homestead" include, but are not limited to, the following: (1) real property which is used for commercial, income producing purposes, except for the agricultural, licensed day care, and long term affordable rental uses provided above; and (2) real property which is used for residential rental purposes, whether for long term or short term, except as provided above and otherwise in this Chapter.

(d) For the purposes of this Article, the tax rate classification for Residential Investor shall be applied to properties that do not qualify for the home exemption, are improved with a dwelling unit(s), and not vacant land, and have an assessed value of [one] two million dollars [(\$1,000,000.00)] (\$2,000,000.00) or more.

(e) The owner may appeal the property's tax rate classification as in the case of an appeal from an assessment."

(Material to be deleted is bracketed. New material is underscored.)